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Intrusive Interdependence and the Formulation of Canadian Foreign Economic Policy: The Provinces and the North American Free Trade Agreement

by

Christopher John Kukucha ©

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements for the degree of Doctor of Philosophy

Department of Political Science

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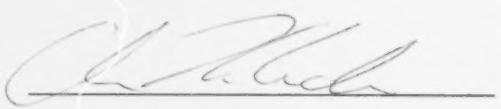

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The undersigned certify that they have read, and recommended to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled Intrusive Interdependence and the Formulation of Canadian Foreign Economic Policy: The Provinces and the North American Free Trade Agreement submitted by Christopher John Kukucha in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

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Abstract

The post-war period has been marked by a proliferation of international economic regimes that have limited the capacity of most states in the international system to pursue independent policy initiatives. In the Canadian case, this is clearly evident when examining the impact of the North American Free Trade Agreement on the formulation of foreign economic policy. Not only is the federal government restricted by the regime based norms and rules associated with the NAFTA but the agreement also includes a number of new provisions that fall under provincial jurisdiction. To date, most studies have concentrated on the "territorial" considerations associated with these regimes and/or Canadian federalism. These studies are useful but fail to address the central focus of this analysis. Specifically, what long term effect will globalization have on federal and provincial autonomy and how is it possible to reconcile the differences between domestic and international levels of analysis? As states cede autonomy to international regimes to manage the increasing intrusiveness of the international system arrangements such as the NAFTA will initially empower the provinces and reinforce the regional political economy of Canadian federalism. As these regimes continue to evolve, however, the autonomy of the provinces will also become limited as issues of sub-national jurisdiction are added to the agenda and domestic sectoral and societal interests mobilize to protect their interests. By introducing the concept of intrusive interdependence this study also addresses some of the theoretical shortcomings associated with the literature on Canadian foreign policy, Canadian federalism and international relations theory.

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CHAPTER 1

Introduction

Introduction

Throughout the post-war period economic regimes have limited state autonomy by restricting the independent policy choices of most governments in the international system. In terms of Canada, this is clearly evident when examining the impact of the North American Free Trade Agreement (NAFTA) on the formulation of Canadian foreign economic policy. Specifically, this study will focus on the international and domestic pressures, namely economic regimes and federal-provincial relations, that currently constrain the foreign economic policy choices of the federal government. At the same time, however, the following chapters will also address a number of theoretical questions regarding the literature on Canadian foreign policy, Canadian federalism, and international relations theory. To date, most studies have focused on the institutions and "territorial" conceptions of identity associated with regimes and federal-provincial relations. These are valid observations. By limiting discussion to those issues, however, one misses other important, and perhaps more interesting questions that might be asked. Specifically, what long term impact will globalization have on federal and provincial autonomy and how is it possible to reconcile the differences between domestic and international levels of analysis? By introducing the concept of intrusive interdependence this study will suggest that as globalization continues to evolve autonomy is challenged by both international and domestic factors for both federal and provincial governments. At the international level,

states cede sovereignty to international regimes in an attempt to manage these transnational forces. In federal states like Canada, this initially empowers the provinces and reinforces traditional regional cleavages within Canadian federalism. Over time, however, provincial autonomy is also eroded as issues of sub-national jurisdiction are added to the international agenda and domestic non-territorial cleavages mobilize to protect their interests.[1]

The following chapters are divided into three main sections. The first outlines the increasing intrusiveness of international globalization, the forces promoting decentralization of Canadian federalism before the North American Free Trade Agreement, and the theoretical implications associated with these developments. In addition, it also acknowledges the fact that provincial activity in the international system has increased substantially during the latter stages of the post-war period for economic and, in the case of Quebec, nationalist reasons. Although these changes were reinforced by the NAFTA it is important to understand that international and domestic pressures existed prior to the agreement and that these factors provided new opportunities for the provinces while limiting the capacity of the federal government to formulate independent economic policy. The second section of this study focuses exclusively on the North American Free Trade Agreement. Specifically, it examines the intrusiveness of the regime and the areas of domestic jurisdiction that were included in the agreement. It also outlines the emerging NAFTA committee system and the potential constitutional significance of formalizing these executive linkages. In addition, the importance of the NAFTA side deals on labour and environment are discussed in the sense that both include exclusive areas of provincial jurisdiction which has forced the federal government to enter into negotiations with the provinces over a binding enforcement mechanism. Finally, the last section of the study examines the extent to which either level of government in Canada has acknowledged and responded to the implications related to these developments and the potential long-term impact of intrusive interdependence. Based on interviews with both federal and provincial officials it is clear that this is not the case. For the most part government representatives remain concerned with the daily "wins" and "losses" of Canadian federalism. As such, they continue to formulate Canadian foreign economic policy primarily on an ad hoc basis.

Economic Issues and the Evolution of Canadian Foreign Policy

In order to comprehend the importance of economic regimes in the formulation of Canadian foreign economic policy it is first necessary to understand how these arrangements have been linked to Canada's perceived role in the international community. As a middle power Canada saw regimes as a forum in which to influence great powers, most notably the United States, during the post-war period. In terms of economic policy these goals were

pursued in regimes such as the General Agreement on Tariffs and Trade (GATT), the International Monetary Fund (IMF), the World Bank, and more recently the Canada-United States Free Trade Agreement (FTA). Although Canada saw these arrangements as a means of addressing some of the economic problems that contributed to the outbreak of the Second World War it was also clear that Ottawa's early commitment to these regimes was based on a sense of pragmatism that placed a high priority on Canadian policy objectives. As one observer has suggested, one "should not assume that support for these processes and institutions [was] inherently enlightened and [reflected] an abnegation of national interests, or that there [was] an inconsistency between the pursuit of internationalist goals and serving national objectives."[2] In fact, especially in the early stages of the development of these regimes, Canada often violated the established norms of these arrangements in order to protect Canadian economic interests. As the following study suggests, however, it has become increasingly less possible for Ottawa to respond to international and domestic pressures in this manner. Regime norms may have been relatively easy to violate in the past, but the increasing intrusiveness of these arrangements is such that central governments have continued to lose the capacity to pursue independent policy initiatives. In other words, while multilateralism has frequently been viewed as the most effective strategy for pursuing Canadian policy objectives it has become less possible to protect domestic interests as regimes such as the NAFTA continue to include increasing levels of federal and provincial jurisdiction.

In reviewing the historical development of Canadian foreign economic policy it is important to note that the role of the Department of External Affairs in the post-war period was often a relatively minor one. Although External Affairs was usually involved in all international negotiations the Department of Finance and Trade and Commerce were the main bureaucratic agencies in Ottawa that dealt with these issues. As a result, past studies of Canadian foreign policy have traditionally ignored economic variables and other issues of "low" politics. For the most part, academics were interested in defining Canada's participation in security-based multilateral institutions such as the United Nations (UN) or the North Atlantic Treaty Organization (NATO), and how Ottawa could hope to have some influence on "high" issues of peace and security given its limited resources. As the following chapters suggest, however, not only has the literature on Canadian foreign policy begun to focus more attention on the relevance of international regimes such as the GATT and the FTA, but since the integration of the Department of External Affairs and Trade and Commerce economic issues have increasingly become a key priority for federal officials responsible for Canada's external relations.

Having said that, it is perhaps somewhat surprising to learn that economic concerns were arguably what led to the creation of the Department of External Affairs in the first place. As early as the turn of the century Earl Grey, the Canadian Governor General, had complained that Canada lacked even the most basic infrastructure in which to participate in reciprocity negotiations with the United States. In a letter to the colonial secretary in London in 1908 Grey lamented that negotiations were not going well given the "chaotic conditions of the Administration here *qua* External Affairs. There is no Department, no official through whose hands all matters dealing with external affairs must go. Consequently, there is no record, no continuity, no method, no consistency." In addition, Grey was also highly critical of the Canadian bureaucrats assigned to the negotiations. In the letter he stated that we "have only three... one drinks at times, the other has difficulty in expressing his thoughts... [but] the third is the Under Secretary of State [Joseph] Pope - a really first-class official."[3]

Based on the endorsement of the Governor General, Pope was assigned as the first deputy head of the new Department of External Affairs in 1909. Pope was given a budget of $14, 950 and temporary office space over a barber shop to coordinate Canada's external relations. Admittedly, these responsibilities were often negligible, given the fact that London still controlled the majority of Canadian foreign policy, but Pope ran the department for 16 years until he was replaced by O.D. Skelton in 1925. During this period External Affairs continued to function on a primarily ad hoc basis, responding to issues as they arose. Mackenzie King, who was Prime Minister during this period, also did little to raise the profile and/or the responsibilities of the department. In fact, King supported a predominantly isolationist policy for Canada during the 1930s. Perhaps the most notable development during these pre-war years was Skelton's "recruitment" of a wide range of talented young individuals including Lester Pearson, Hugh Keenleyside, Hume Wrong, and Norman Robertson, who would all have a significant impact on the department in the 1950s.

The Second World War, and the departure of King in 1948, had a dramatic impact on External Affairs and the evolution of Canadian foreign policy. In fact, most studies characterize this early period as an era of "functional internationalism." According to Kim Nossal, it was "Canada's role in the Second World War which served to catalyze thinking about the country's position in the international hierarchy. The country's war effort was sizable for a state with a small population and limited resources. Sizable enough, many Canadians felt, to demand the revision of the country's status in the international hierarchy."[4] Unfortunately, however, Great Britain and the United States were less enthusiastic about these suggestions given the fear that other Western allies would demand

a similar role, making a difficult post-war situation even more complicated. As a result, Canada proposed a "functional" principle of representation which "asserted that in those areas where a smaller state had both an interest and expertise it should be regarded as a major power."[5]

Functional internationalism enhanced the status of a number of states but its main contribution was to help define Canada's role in the international system during the post-war period. Middle powers, for example, were perceived as having adequate resources and geographical importance that "in peacetime the great powers bid for its support, and in wartime, while it has no hope of winning a war against a great power, it can hope to inflict costs on a great power out of proportion to what a great power can hope to gain by attacking it."[6] At the same time, however, even Canada acknowledged the fact that middle powers were only capable of defending limited interests and were unable to "unify continents, rule the high seas, or control the international market."[7] As a result, middle powers came to be defined as states that did not have many of the same responsibilities that limited the flexibility of great powers in the international community. This freedom, which was at the heart of functional internationalism, meant that middle powers were "more capable than the great powers of pursuing consistently what might be regarded as the universal interest of upholding international law and order."[8] At the same time, however, it has also been suggested that these states could "afford to champion international ideas because they did not have the responsibility of enforcing them."[9] Regardless, the tendency of middle powers to act in this manner, and Canada was no exception, meant that "exercise of middlepowermanship was ad hoc, not planned; [and that] its practitioners downplayed the pursuit of long range goals."[10]

As a middle power Canada also understood the need to work with other states in order to enhance its ability to influence developments in the international system. As a result, Canadian foreign policy was dominated by a commitment to multilateralism in the early post-war period.[11] Specifically, Canada saw multilateral institutions, most notably NATO and the UN, as ensuring a Canadian role in the increasingly deteriorating east-west relationship. According to Barbara Ward, there were only a small number of governments that could have an impact in this capacity. After all, the superpowers were "too vast, too unwieldy, too locked in their own responsibilities. The great mass of new states too poor and too shaky."[12] Middle powers, on the other hand, appeared to occupy the "right position on the scale of influence."[13] As Lester Pearson, then Secretary of State for External Affairs for the St. Laurent government noted in his memoirs, Canada "stood between the increasing number of small states which had little power and the great states that had too much."[14]

In the immediate post-war period these principles also dominated Canada's approach to emerging international economic regimes such as the International Monetary Fund, the World Bank, and the General Agreement on Tariffs and Trade. Following the lead of Great Britain and the United States, Canada supported the creation of these agreements, better known as the Bretton Woods system, in order to help rebuild the economies of the Allied powers in Europe after the end of the Second World War. As Canadian trade was dominated by the British and the Americans before and after the war the federal government was generally supportive of Allied attempts to establish these multilateral economic regimes. Prior to World War Two, Canada imported close to two-thirds of its goods from the United States but only approximately one-third of Canadian trade went to the Americans. To compensate, the federal government relied on trade links with Great Britain and other Commonwealth countries to offset its trade imbalance with the United States. With Britain's economic status now greatly diminished Canada was more dependent on the Americans than ever before. As a result, federal officials saw the creation of an effective multilateral system as a means of counterbalancing the growing bilateral and/or continental orientation of Canadian foreign economic policy.[15]

After extensive negotiations in Washington the International Monetary Fund (IMF) was created in June of 1943. Ultimately, the fund was to serve as a source of short-term revenue for states with economic difficulties related to balance-of-payment deficits. Specifically, the IMF supplied short-term loans, called for fixed exchange rates and tied currency rates to the price of gold. Provisions were also included that allowed states to restrict payments and transfers in order to adjust to the economic realities of the evolving post-war system. The International Bank of Reconstruction and Development (IBRD or World Bank), on the other hand, was established to provide the larger financing required for post-war reconstruction. In the period immediately following the Second World War, however, a number of states generally ignored the rules and norms established by these new financial regimes. In fact, as Michael Webb has noted, the transitional provisions of the IMF were often used to protect domestic economies and allow governments to pursue policies of full employment.[16] In addition, exchange rates were routinely altered and trade imbalances were also dealt with on a bilateral basis. Faced with its own severe external payments pressures Canada was also guilty of violating the established norms of these new institutions. The first crisis came in November of 1947 when it became clear that trade with Britain would no longer counterbalance Canada's dependence on American imports. Instead of asking the IMF for a loan, as Washington suggested, Ottawa entered into bilateral discussions with the United States and imposed a number of discriminatory restrictions on American imports. The situation was finally resolved not with the help of

the World Bank but from a direct $300 million loan from the United States and a promise to encourage American foreign direct investment. Canada also decided to "float" its dollar in 1950 despite recommendations from the IMF to hold its currency within plus or minus one per cent of the established fixed parity.

The third foundation of the Bretton Woods system was the General Agreement on Tariffs and Trade. Initially, negotiations for the GATT, which did not begin until 1945, were designed to create a formal institutional framework for international trade that would work in conjunction with the IMF and the IBRD. As Jock Finlayson suggests, the International Trade Organization (ITO), as outlined in the 1948 Havana Charter, was "intended to have a very expansive regulatory scope, encompassing not only trade-barrier issues but also such matters as international-investment rules, the operation of commodity agreements, and restrictive business practices."[17] Close to sixty members of the UN voted to approve the Havana Charter, but the ITO was not well received by the United States Congress where it was seen as protectionist by Democrats and too liberal for Republicans. Unfortunately, the ITO required Congressional support to become law in the United States and the legislation supporting the establishment of the new institution was withdrawn without a vote in 1950. As a result, the GATT, which was and remains a series of binding agreements among contractual parties and not a formal institution, became the only mechanism for monitoring post-war trade relations.[18] Canada had fully supported the ITO. It also worked to ensure that the GATT, despite its somewhat tentative status, became an effective forum for pursuing Canadian economic interests and promoting liberalized trade at the international level. As chapter three suggests, however, while Canada remained an active participant in various GATT rounds throughout the early post-war period, it was also one of the states that often looked to exempt many of its domestic sectoral interests from these new liberalized arrangements.

It is important to note that several other developments soon began to challenge the compromises reached in 1944 at Bretton Woods, New Hampshire. The first problem, as suggested earlier, was the shortage of capital most states experienced following the war. As was the case with Canada, many governments could not maintain the stable and fixed currency rates established by the IMF. These pressures also made it almost impossible for the World Bank to provide adequate funding that countries required to re-develop their economies. As a result, the United States effectively became the leader of a global economic system that was supposed to be unified by a number of multilateral institutions. While the IMF and the World Bank continued to function, the Americans became the major source of revenue for these states in the form of military assistance or other foreign development programs such as the Marshall Plan. The newly independent states of the

Third World also presented a new challenge to Canadian policy-makers. Most officials had little contact with developing countries in the early post-war period. Commonwealth meetings and the proliferation of new members in the United Nations, however, brought the needs of these states to the forefront of Canadian foreign economic policy. As one observer has noted, before "the end of the 1960s two of the principal architects of Canada's post-war multilateralist foreign policy - Escott Reid and Lester Pearson - turned their attention and talents to the World Bank and its efforts to alleviate the sufferings of the world's poor."[19] The emergence of the North-South debate on global economic reform, however, challenged Canada's traditional support for multilateralism. For these former colonies the Bretton Woods system was dominated by Western capitalist interests that did little to protect their needs or interests. As a result, these countries began to use their expanded membership in international institutions, such as the UN and the Commonwealth, to articulate their concerns and push for what they saw as much needed reforms. While somewhat sympathetic to these demands it became more difficult for Canada to look to multilateral institutions as a means of advancing Canadian interests at the international level. As Pearson noted in his memoirs, Canada became "increasingly worried about the tendency of [these institutions] to be stampeded into impracticable resolutions passed by a majority which did not include those powers essential to their implementation."[20]

The economic integration of Europe and Canada's growing reliance on the American market continued to be major concerns for Canadian policy makers in the late 1950s and early 1960s. Following the election of the Progressive Conservatives and John Diefenbaker in 1957 these issues became a focal point of the Canadian economic policy agenda. Although Diefenbaker remained somewhat committed to the GATT he also pursued other ties with Great Britain, Europe, and the Commonwealth that were designed to offset Canadian dependence on the United States as opposed to furthering the evolution of the GATT regime. As Michael Tucker has noted, "Diefenbaker accepted Lester Pearson's earlier judgment that the days of 'easy and automatic' relations with the United States were over. This, in addition to the disquiet caused by a record trade concentration and imbalance, led the Prime Minister to declare that he would approach the relationship by placing Canadian interests first."[21] Given these objectives, Diefenbaker was especially interested in the prospects of European integration, even arguing, somewhat ironically, that the proposed union violated international trade rules outlined in the GATT. In addition, Diefenbaker openly campaigned against Britain's attempts to join the European Common Market. Not surprisingly this created a great deal of strain in Anglo-Canadian relations and did little to further diversify Canadian trade relations.

It was also during this period that Canada experienced a balance-of-payments problem that led to the exchange rate crisis of 1961-62. As Webb points out, the Diefenbaker government responded by fixing the dollar at a rate of 92.5 cents U.S. in an attempt to reduce speculative attacks by foreign investors who had lost confidence in the Canadian economy. Shortly after Diefenbaker was re-elected with a minority government in 1962 Canada was again faced with further economic difficulties as the decision to maintain the fixed rate resulted in a depletion of domestic capital reserves. In fact, the federal government was once again forced to turn to the IMF and the United States for financial assistance in order to deal with its growing deficit problems. In an effort to deal with these issues the Diefenbaker government imposed temporary import surcharges on approximately $3 billion worth of American goods in an attempt to generate more revenue. Although these restrictions violated GATT rules and were inconsistent with the practices of the IMF Canada received only limited criticism from both regimes. This was due mainly to the fact that the federal government tightened fiscal and monetary policies, as recommended by the IMF, and quickly phased out the surcharge as its payments situation improved. Once again, however, a Canadian commitment to the Bretton Woods system in principle was not above a violation of the norms if needed. The fact that Canada received limited criticism for these actions also suggests that during this period the intrusiveness of these regimes remained somewhat limited. In other words, both the IMF and the GATT "proved sufficiently flexible enough to accommodate policies that violated regime rules yet were consistent with broader regime norms."[22]

In addition to these problems Canada was forced to face a number of new challenges as the country entered the 1970s. In August of 1971 President Richard Nixon, in an attempt to end the first American trade deficit in over 100 years, effectively terminated the Bretton Woods system by announcing that the United States was introducing a 10 per cent surcharge on imports, wage and price controls, and an end to the gold standard for American currency. These developments not only made it clear that the United States was no longer willing to accept responsibility for the maintenance of the post-war liberal economic order but the Americans also informed the Canadian government that it would no longer be able to gain special concessions from Washington on issues of trade and monetary policy. In addition, Canada went through a period of high inflation and unemployment that created further problems for the domestic economy. Canada was not alone, however, in trying to deal with these challenges. Other states also had to cope with "severe domestic and international economic instability as governments cast about for new approaches to international macro-economic adjustment compatible with increasing international economic interdependence and capital mobility."[23] In an effort to improve the

Canadian economy the federal government attempted to diversify its trade relations with Pierre Trudeau's "third option," which was designed to expand Canadian linkages with non-traditional trading partners, as well as maintaining its multilateral commitments during the Tokyo Round of the GATT. Despite these significant economic challenges, Canada also gained access to the annual Group of Seven meeting of the world's industrial leaders during this period largely due to American interest in providing a balance to the predominantly European membership of the new organization.

As much as the federal government wanted to diversify its trade relations with the United States it soon became clear that the markets targeted by Trudeau's third option, especially those in Europe, were for the most part uninterested in developing closer economic ties with Canada. Great Britain, formerly Canada's leading trade partner prior to World War Two, had effectively collapsed economically in the post-war period and most other European states were in the process of moving toward economic integration. As a result, Trudeau was forced to reconsider a free trade agreement with the United States in order to deal with the economic difficulties facing Canada throughout the 1970s. Although the decision appeared to run contrary to Trudeau's earlier economic initiatives it was not completely inconsistent with his vision of Canadian foreign policy. As early as 1970, with the publication of the government white paper, *Foreign Policy for Canadians*, free trade with the United States was considered a viable economic option.[24] Specifically, while the review did not discount the ongoing relevance of the GATT, it did question Canada's commitment to multilateralism and its membership in institutions such as the UN, NATO, and the Commonwealth. This was not meant to imply that Canada was going to play a passive international role or abandon its traditional support for multilateral institutions. The white paper simply challenged the reactive and ad-hoc policies of the past and suggested that Canada pursue a number of bilateral linkages in order to effectively address its long-term domestic and international interests. As Mitchell Sharp, Trudeau's Secretary of State for External Affairs, suggested, "Canada was no longer interested in being a helpful fixer. We did not seek a role in the world as a mediator or honest broker. Our foreign policy, like the foreign policies of other countries, was to be directed to promoting Canadian objectives and interests which, of course, included the preservation of peace and the avoidance of war. This did not mean that Canadian policy was to become more selfish... [but] Canadian policy did become more consciously nationalist in expression."[25] As J.L. Granatstein and Robert Bothwell have noted, the pursuit of continental free trade effectively meant that the "third option was quietly and unobtrusively trundled off to the attic."[26]

As the following chapters suggest, the intrusiveness of international economic regimes and Canada's commitment to these rules-based arrangements underwent a

significant transformation during the subsequent Mulroney and Chretien administrations. Canada was an active participant in the Uruguay Round of the GATT and supported the creation of the new World Trade Organization (WTO). In addition, Canada also negotiated the removal of trade barriers involving some of the most sensitive sectors of the domestic economy, namely agriculture and investment. Canada pursued bilateral (FTA) and trilateral (NAFTA) linkages to offset the perceived shortcomings of the GATT. In all these areas, it is important to note that the intrusive nature of these agreements were such that they placed greater restrictions on state autonomy than any other previous international economic arrangements. In earlier periods Canada's commitment to multilateral institutions and international economic regimes did not limit Ottawa's ability to violate regime norms when it saw Canadian interests being threatened. As this study will demonstrate, however, Canada, as with many other states in the international system, no longer has the degree of freedom or the capacity to pursue economic policy initiatives that violate the intrusive provisions of regimes such as the NAFTA.

It is also clear from the previous discussion that "economic policy" does not simply refer to the exchange of commodity-based goods. Specifically, it includes a combination of factors, including trade, monetary, investment, and development assistance considerations. The focus of this study, however, is such that many of these important aspects of economic policy will not be discussed. As this is an analysis of the NAFTA and its impact on Canadian foreign policy and federal-provincial relations it will concentrate on trade-related issues. Although globalization has made it increasingly less relevant to make a clear distinction between fiscal and trade policy the following chapters will deal primarily with the GATT, the FTA, and the NAFTA. By concentrating on the North American Free Trade Agreement it becomes possible to illustrate the increasing intrusiveness of international economic regimes more generally and their impact on Canada at both the international and domestic level. Not only does the NAFTA reinforce the fact that the federal government has only limited means in which to control the decentralization of Canadian federalism, but it also introduces the potential relevance of a number of other important domestic actors. This study is not implying that territorially defined actors, such as the provinces, are no longer relevant. It simply suggests that new models that address issues of change, state autonomy, and international and domestic levels of analysis are required. As a result, it is necessary to explore the existing literature on these issues and determine the shortcomings of these approaches. As the following review indicates the federalism and foreign policy literature fails to provide an adequate framework for this analysis. Although international relations theory has engaged these issues in more depth, and as such provides some

alternative concepts that require consideration, it is also clear that this branch of the literature is not without its own theoretical weaknesses.

Theoretical Challenges - Canadian Foreign Policy

In reviewing the literature on Canada's external relations it is first necessary to examine those contributions that directly address the relationship between international regimes and Canadian foreign policy. In doing so it is possible to identify three general lines of argument in these studies. The first suggests that Canada's traditional commitment to multilateralism and the establishment of regime-based norms is not as strong as Canadian policy-makers would have one believe. These approaches base their conclusions on many of the developments touched on in the preceding discussion of Canada's approach to foreign economic policy in the post-war period. Specifically, they look at Canada's tendency to violate the principles of these economic regimes, and the pursuit of bilateral as opposed to multilateral, linkages as an example of Ottawa's real ambivalence to these agreements. As Claire Cutler and Mark Zacher have suggested, this prevailing attitude reveals "that the Canadian commitment to multilateralism and liberalization is an exaggerated one, and in some cases, an inaccurate portrayal of Canadian foreign economic policy."[27] While the importance of these international economic regimes is arguably difficult to dismiss, the authors still believe that a close analysis of Canadian foreign economic policy indicates an uneven commitment to the principles necessary for establishing a functioning system of international economic cooperation.

There are several other studies that also argue that the rules and norms associated with these regimes remain secondary to matters of state sovereignty and the ability of governments to pursue issues considered vital to the national interest. Jock Finlayson and Stefan Bertasi, for example, have suggested in their analysis of Canada's post-war international trade policy that the Canadian commitment to international economic regimes was never absolute.[28] In fact, they argue that Ottawa pursued a bilateral agreement with the United States largely due to the fact that there were a number of issues in the then ongoing Uruguay Round of GATT negotiations that Canada did not want to address. Christopher Thomas has also examined the establishment of a bilateral trade regime with the United States in terms of Canada's growing disillusionment with the GATT and the need to reinforce the economic relationship with its largest trading partner.[29] Thomas is less critical of the General Agreement on Tariffs and Trade, in the sense that he identifies a direct relationship between the content of the FTA and the pre-existing GATT regime. Yet he still questions the Canadian commitment to both multilateral and bilateral trade agreements. Finally, Theodore Cohn, in a study examining Canadian agricultural policy,

has suggested that pressure from domestic sectoral interests has a greater impact on governments than international regimes.[30] Specifically, Cohn perceives agriculture as its own opposing internal "regime" which creates a great deal of tension between international norms and rules and those established at the domestic level. As chapter three suggests this framework would probably also be applicable to an analysis of the Mexican energy sector.

A second general theme evident in the Canadian foreign policy literature dealing with regimes is one of American dependence. David Dewitt and John Kirton, for example, have labeled this approach as the "peripheral-dependence" perspective.[31] Specifically, they suggest that these studies stress Canada's cultural, political, and economic dependence on more powerful international actors, namely the United States. This line of argument has existed in the foreign policy literature since the mid-1960s and has traditionally focused not only on the reliance of the Canadian government on the American market for international trade but also on the predominance of United States investment in Canada.[32] One of the most important aspects of the peripheral-dependence approach is its challenge to the notion that Canada has always been a middle-power. In contrast, the peripheral-dependence perspective suggests that Canada is actually a small power within the international system. This minor status, therefore "inhibits Canadians from developing a concept of their country's relevance in the world at large and induces them to focus on a bilateral Canada-U.S. framework that accentuates their subordinate status and leads to a preoccupation with defensive efforts to limit American power."[33] As such, most important international agreements are bilateral ones with the United States. Therefore, Canada's involvement in multilateral economic regimes is primarily designed to support American preferences and policies. In sum, multilaterally, "it provides direct reinforcement for United States foreign policy doctrines and limits its dissent from U.S. positions to marginal aspects. Bilaterally, it assigns the highest importance to themes of harmony and commonality in the 'special relationship', ... and encourages a flow of transactions from the United States into Canada."[34] In other words, peripheral dependence argues that north-south economic forces and a heavy reliance on the United States market reinforces an important role for provinces in the Canadian political economy.

One prominent author who has adopted the peripheral dependence approach is Stephen Clarkson. In his analysis of the FTA, Clarkson argues that although the Canadian state had reached a point in history where it was at its most advanced stage of development the federal government decided to enter into an agreement that abdicated most of Canada's economic and cultural sovereignty.[35] Clarkson concedes that these developments are perhaps not that surprising given the continental reality of both Canadian and American investment patterns. He believes, however, that they were contrary to the economic policy

initiatives undertaken during the Trudeau administration that were designed to diversify Canada's external trade relations in a system of declining American hegemony. As Clarkson suggests, these "nation-building dreams only lasted as long as the global balance of power allowed Canada to maintain a more autonomous role. When the world market moved in the opposite direction from what Ottawa had expected and when the United States reacted aggressively to the decline of its global position, the Canadian government was forced to reorient its whole approach to governing."[36] In other words, the arrival of President Reagan, who obviously had little sympathy for requests from the Trudeau government for any special exemptions from American economic programs, meant that Canada was now under extreme pressure from Washington to change its policies. Reaganomics was based on the pursuit of greater liberalization at the international level coupled with an increase in domestic protectionism and Canada became the test case for American policy initiatives. For Clarkson, the only hope at reversing what he perceived as the negative impact of the FTA was to look for a renewed interventionist, internationalist, and social-democratic state in Canada. In his words, the survival of Canada within the FTA depended "on those north of the forty-ninth parallel retaining a sufficient sense of their nationality to insist that their state's mode of regulation respond not just to the demands of capital but to the needs of nationhood, not just to the regime of accumulation but to the system of legitimation."[37]

The third line of argument dealing with the relationship between international economic regimes and Canadian foreign policy rests on the assumption that these rules and norms do have a significant impact on interstate relations and as a functioning middle-power Canada has an important role to play in these multilateral and bilateral arrangements. Primarily, studies adopting this approach accept the fact that these linkages are an inevitable result of increasing interdependence and that problems associated with these developments require cooperation and increased communication in order to adequately respond to these pressures. At the heart of this approach is the belief that Canadian participation in these forums enhances Canada's influence as a functioning middle-power in the international system. Strong multilateral regimes are viewed as a means of enhancing economic welfare and peace in an interdependent global system and reducing American domination of the Canadian economy. As Cutler and Zacher suggest, these goals are usually articulated by federal representatives extolling the benefits of Canada's membership in these regimes: "Indeed, Canadian foreign policy officials stress that Canada has a strong interest in multilateralism and economic liberalization because this enhances economic welfare and Canadian influence in international affairs."[38]

Several authors adopt this approach when examining the evolution of Canadian foreign economic policy in the post-war period. Both Michael Hart and Frank Stone, for example, cite the development of international economic regimes such as the GATT and the FTA as important mechanisms for managing systemic changes related to globalization.[39] As Stone suggests in his study on the GATT, the current "system constitutes a great advance in international cooperation over the anarchical conditions that characterized world trade relationships during the inter-war period and, indeed, represents one of the most successful efforts in international cooperation of the post-war period."[40] Therefore, both Stone and Hart conclude that the maintenance and evolution of the multilateral system should remain a focal point of Canadian trade policy. Tom Keating has also stressed the importance of multilateralism and suggests that Canadian policy-makers have repeatedly relied on both economic and security regimes in an attempt to fulfill a wide range of foreign policy objectives.[41] "In addition to arguing that multilateralism has been one of the most important defining characteristics of Canadian foreign policy, ... [Keating] also illustrates how multilateralism has been used to meet quite distinct policy objectives, ranging from global goals involving a more peaceful and stable international order to possessive goals intended to satisfy narrow national interests."[42] Keating also makes it clear, however, that Canadian support for international regimes has not been unconditional. In response to both international and domestic pressures Ottawa has pursued unilateral and/or selected bilateral arrangements in its external relations. According to Keating, however, what becomes apparent over time, "is that these alternatives are deviations from the norm, are short-lived, and are frequently combined with complimentary multilateral activities."[43]

Although all three perspectives make important, and relevant, observations regarding the evolution of Canadian foreign policy in the post war period the following chapters will suggest that the "multilateral" approaches of Hart, Stone, and Keating have the most relevance to this analysis. All stress the continuing importance of international economic regimes in the post-war period and argue that the maintenance of these linkages are essential if Canada wants to manage ongoing pressures associated with globalization. At the same time, however, this brief review of the literature dealing with regimes and Canadian foreign policy illustrates a number of weaknesses with the studies discussed above, especially in terms of trying to better understand the relevance of the NAFTA. First of all, it is clear that there is no consensus among these authors regarding the primary reasons behind Canada's ongoing commitment to international economic regimes such as the GATT and the FTA and little, if any, attention to the effects of these arrangements on policy making. There is also the fact that all of these contributions focus on the FTA and most were written before negotiations for the NAFTA even started. In addition, there is no

real mention, with the possible exception of Cohn, of the evolving role of the provinces, the influence of other important domestic sectoral interests in the policy process, and how these actors have been influenced by regime involvement. Finally, and perhaps most importantly, for the most part these contributions are atheoretical. While they all make some important and relevant observations regarding state autonomy they fail to address the related issues of change and the linkages between domestic and international levels of analysis.

The debate as to whether or not the literature on Canadian foreign policy actually engages theoretical issues in any meaningful capacity has been addressed by David Black and Heather Smith. Specifically, Black and Smith set out to challenge Maureen Molot's contention that the Canadian foreign policy literature "has been captured by its own preoccupations and has, therefore, remained highly descriptive, rarely posing questions about implications of paradigm choice and paradigm debate for its endeavours."[44] Although Black and Smith do not completely disagree with Molot's conclusion they suggest that the scholarship on Canadian foreign policy has "grown significantly in theoretical sophistication, with the increasing incorporation of ideas drawn from broader international relations and foreign policy traditions."[45] Specifically, they review a number of publications including contributions examining the domestic sources of Canadian foreign policy, Dewitt and Kirton's "complex neo-realist" perspective, and efforts to re-evaluate Canada's role as a middle power. In the end, however, Black and Smith are forced to conclude that the "theoretical development of Canadian foreign policy is marked by significant inadequacies and lacunae. Above all, there is at best, limited cumulation, limited refinement of promising theoretical beginnings, limited pursuit of interesting debates and limited empirical research designed to test and refine theoretical and analytical propositions."[46] Therefore, in order to contribute to a more theoretically sophisticated sub-field, new approaches are required which "integrate both domestic and international influences on the state, which make fuller use of ideas drawn from the wider body of international and comparative politics literatures, and which engage in comparison across countries issues areas and time... ."[47]

A brief review of the literature, as outlined by Black and Smith, would appear to support these conclusions. In terms of domestic sources, they cite the importance of Kim Nossal and Cranford Pratt for including micro-level actors in their analysis. Nossal, for example, has proposed a "modified statist" model for studying Canadian foreign policy in the sense that domestic groups may have some impact on the agenda but, for the most part, the "state" is autonomous when it comes to controlling Canada's external relations.[48] Pratt, on the other hand, has argued that a "counter-consensus" exists in Canada and that

pressure from societal interests and non-governmental organizations have a major impact on the policy objectives of the federal government, especially in terms of development assistance programs.[49] Dewitt and Kirton, however, approach the study of Canadian foreign policy from a much different perspective. They borrow heavily from international relations theory for their model of "complex neo-realism" which suggests that interdependence and declining hegemony have created a number of new "principal powers" (including Canada) in the international system.[50] Black and Smith also "revisit" efforts to re-examine Canada's role as a middle power. Although critical of traditional approaches, including those practiced by John Holmes, they do praise the "new breed" of middle-power scholars such as Bernard Wood, who ranks middle-powers in order to justify their importance in multilateral institutions, and Pratt, who suggests that these states have a greater commitment to issues of humane internationalism given their domestic political cultures.[51] Arguably, these contributions say a great deal more about Canadian foreign policy than the older literature but, at the same time, Nossal's attention to the state, Pratt's focus on domestic societal actors, Dewitt and Kirton's marginalization of the United States, and Wood's almost exclusive analysis of systemic variables, all weaken the theoretical potential of these efforts. In the end, all fail to adequately address a number of the theory-related problems outlined by Black and Smith.

In their conclusion Black and Smith do suggest a number of possible alternatives or "new directions" for the theoretical evolution of Canadian foreign policy. Of particular interest to the authors is regime theory. Specifically, they believe that regime analysis can inform the study of Canadian foreign policy in two ways. First, regimes can be treated as policy determinants. In this sense it is important to examine these structures and determine their impact on the policy developments of a given state. According to Black and Smith regimes would then have to be assessed not only in regards to their "reduction of transaction costs at the system level, but also in terms of their impact at the domestic level."[52] In other words, it is important to examine the domestic decision making process and determine what impact a regime might have on the policies selected by these actors. As the authors suggest, this "avenue of research would incorporate regime analysis into the study of Canadian foreign and indeed domestic policies. We could test the relationship between the Canadian state and international regimes, thus drawing on a large body of existing international relations literature, as well as partially correcting for the dominance of regime case studies which focus solely on the United States."[53] Black and Smith cite the text by Cutler and Zacher as an example of how the study of regimes can offer a possible new direction for the literature on Canadian foreign policy.[54] The collection of essays not only suggests that domestic factors are important determinants of foreign policy but also

challenges traditional conceptions of Canada's "position" as a middle power and its commitment to multilateralism. "While it could more fully integrate the insights of the regime literature, it does use the concept of regime as a common theoretical thread to link the chapters and therefore generate comparisons across issue areas."[55]

Another alternative noted by Black and Smith, is the text by Andrew Cooper, Richard Higgott, and Kim Nossal that addresses Canadian foreign policy from a regime theory perspective.[56] Specifically, Cooper, Higgott and Nossal suggest that in the post-war period middle-powers continue to have options and can have an important leadership role in international regimes. As Canada's and Australia's experience in the Cairns Group during the Uruguay round of the GATT suggests there is a need to provide "an alternative perspective on the international policy-making process - one that stresses the importance of secondary players in the international system." In their opinion, "the role of smaller states in the resolution of contemporary international problems is all too often overlooked, or given short shrift, by both the policy-makers and scholars of the major powers."[57] In their analysis, Cooper, Higgott and Nossal, borrow the old "functional" definition of middle-power internationalism and conclude that it is essential to recognize the "technical and entrepreneurial capacities of states like Canada and Australia to provide complementary or alternative initiative-oriented sources of leadership and enhanced coalition-building in specific issue-specific contexts."[58] At the same time, however, the authors suggest that their analysis differs from previous middle-power approaches, such as those of Bernard Wood, in terms of avoiding the often "inspirational" and "celebratory" tone usually associated with these studies. By contrast, their goal is to "relocate" the concept of middle power in essentially theoretical terms. Specifically, although "structural determinants of power in the international system should never be underestimated, the structure of anarchy in international relations is by no means predetermined: states can, in short, make a difference."[59]

Another "new direction" that Black and Smith propose is the "historical materialist" approach of Robert Cox.[60] Cox suggests that world affairs are determined by the interaction of three "spheres" of activity: the "dominant world order" (or politico-strategic environment), social forces generated by processes of production (national and transnational), and forms of states (domestic state-society complexes that are composed of material capabilities, dominant social forces, values and ideas, and institutional structures). Black and Smith also note that Cox places a heavy emphasis on Gramscian conceptions of hegemony, namely the impact of dominant values, ideas, institutions, and material predominance, in his analysis of alternative world orders. Although Black and Smith point out that "Cox's approach is holistic, complex, and... difficult to apply"[61] they still suggest

it offers several advantages, especially in terms of its emphasis on the interaction of domestic and international/transnational forces and their impact on state autonomy. They also support Cox's efforts to identify forces that contribute to change in order to understand better why state policies are altered over time. As Black and Smith suggest, "there is an emerging body of work which has attempted to use this approach to explain aspects of Canada's role in North South relations, and its approach to the institutions of postwar multilateralism."[62] Both authors note that a historical materialist analysis of the Canada-United States Free Trade Agreement would be a beneficial addition to the literature.

If these conclusions are accurate it is clear that there is room for a study on the impact of international economic regimes, such as the North American Free Trade Agreement, on Canadian foreign policy. It is also clear that any such study will have to better integrate an appropriate theoretical framework into its analysis. At the same time, however, it is not simply enough to accept regime theory and/or "historical materialism" as possible alternatives without thoroughly examining the potential shortcomings of these approaches. Although international relations theory will be addressed in greater detail shortly, it is clear from the above discussion that most studies of Canadian foreign policy fail to address two main issues adequately, namely state autonomy and the relationship between international and domestic levels of analysis. Black and Smith acknowledge the work of Cutler and Zacher and Cox but it is important to point out that several other contributions have also attempted to address these concerns. The two areas that appear to have the most promise in this regard are studies that directly focus on the unique pressures facing federal states in terms of increasing interdependence and those that examine these issues from a political economy perspective. While both provide valuable insight regarding Canada's foreign economic policy, they ultimately fail to overcome many of the concerns raised by Black and Smith.

To date, studies dealing with federal states in the international system have primarily focused on the roles of sub-national actors, questions of conflict and cooperation and/or centralization and decentralization, and the mechanisms in place for controlling relations between both levels of government. As such these analytical approaches have a tendency to exclude potentially relevant non-governmental actors. Douglas Brown and Earl Fry, for example, have argued that federal states provide central governments "opportunities" to manage the foreign policy initiatives of provinces, states, and cantons.[63] Specifically, they suggest that sub-national initiatives do not offer challenges to central authority that are any different than those found in unitary states. In their opinion, the key to maintaining control of the foreign policy agenda is decentralization and management. In an earlier article, however, Brown did concede that although the conduct and substance of

trade policy has traditionally been heavily influenced by the federal government Canada now faces "an increased role by the subnational units of the federation in international affairs."[64] Kim Nossal, on the other hand, has argued that the federal government remains firmly in control of the formulation of Canadian foreign economic policy.[65] Specifically, he contends that the claims of constituent governments for an active and legitimate role in Canada's external relations are often exaggerated and that most provinces have only limited jurisdictional authority to participate in these initiatives. As such, Nossal suggests that it is essential to rediscover the "importance of the central state as an actor in international politics, and of a broadened conception of national security as the proper focus of foreign policy."[66] Finally, Brian Hocking has also examined the foreign relations of federal states but approaches the issue less from a perspective of decentralization and/or centralization and instead concludes that globalization creates a "diffuseness" that promotes a need for collaboration between both levels of government.[67] Hocking, however, stresses the fact that this collaboration is not as conflictual as some observers imply.

As the following analysis of the NAFTA suggests these studies provide considerable insight into the current reality of contemporary Canadian foreign economic policy. Although they do not directly engage the international relations and/or federalism literature they are somewhat theoretical in the sense that all raise important questions regarding state autonomy. At the same time, however, it is clear that these discussions focus primarily on the mechanisms available to control and/or coordinate the initiatives of sub-national governments. While these observations are obviously important there is no attempt to address the potential long-term relevance of other sectoral interests at both the domestic and international levels. If these actors are as important as Black and Smith suggest one would assume that it would be essential to examine closely other contributions to the literature that may provide greater insight into the internal characteristics of a given state. Having said that, however, it would be a mistake to completely dismiss the contributions of Brown, Fry, Nossal and Hocking. Although these studies do not fulfill the theoretical agenda outlined by Black and Smith they still offer important insight into the pressures facing governments in the contemporary international system.

All of this suggests a need for more "critical" theory in terms of analyzing and conceptualizing these developments. Denis Stairs has argued that studies of Canadian foreign policy should have a much wider research agenda than in the past.[68] Specifically, he suggests a need to reconsider the state-society relationship and to acknowledge the impact of transnationalism and self-determination on state autonomy. Stairs also argues that new studies need to be more than simply a "record of performance." Therefore, they must engage issues that are prevalent in the contemporary international system, namely

transnationalism, the need to develop humane policies regarding conflict and development assistance, and the possible empowerment of civil society. The following pages will also suggest that this is exactly what is needed to further develop the Canadian foreign policy literature. In fact, it is essential to initiate a dialogue with other parts of the discipline and engage the theoretical contributions that exists within the various sub-fields of political science. In terms of studying the impact of international economic regimes on Canadian foreign policy and federal-provincial relations there is a great deal of material that can provide the basis for a more appropriate theoretical framework. Specifically, studies on Canadian foreign policy, international relations, and Canadian federalism, all have a number of relevant things to say about issues of state autonomy and international and domestic levels of analysis even if on their own they remain incomplete.

Theoretical Challenges - Canadian Federalism

Given that Canada is a federal state one possible means of gaining a better understanding of relevant domestic variables is to review the literature on Canadian federalism. In doing so, however, it quickly becomes apparent that relatively few contributions examine the intrusiveness of contemporary globalization in this area. In terms of the economic dimensions of Canadian federalism most studies focus on issues of centralization and decentralization from a regional or territorial perspective. Specifically, most studies examine economic forces in Canada within the context of federal-provincial relations and/or fiscal federalism, especially in relation to such issues as tax abatements, the Established Programs Financing (EPF), the Canada Assistance Program (CAP), the new Canadian Health and Social Transfer (CHST), and/or regional development programs.[69] Other contributions also focus on the economic aspects of Canadian federalism but do so on a sectoral basis concentrating on issues such as hydro-electric power, interprovincial trade barriers, and/or the much maligned National Energy Program (NEP). In other words, economic issues in the literature on Canadian federalism are a result of federal-provincial relations and domestic territorial conceptions of identity. Societal interests and external factors are, for the most part, irrelevant.

At the same time, however, political economy approaches do attempt to address some of these issues by linking external variables, namely market forces, with developments at the domestic level. There are even a number of contributions that deal directly with the impact of globalization and/or market forces on Canadian federalism. Garth Stevenson and Thomas Courchene, for example, have argued that decentralization in Canada is directly linked to continental economic integration. In other words, greater decentralization is inevitable given the North-South capital flows that dominate the North

American economy.[70] Robert Campbell, and Francois Rocher and Richard Nimijean, have also examined the impact of global restructuring on the evolution of Canadian federalism.[71] They suggest that in the current era of globalization state sovereignty is limited by the new international political economy. Specifically, as market forces begin to restrict the ability of central governments to regulate national economies these responsibilities are then transferred to the provinces. Campbell, however, argues that these pressures have enhanced centralization in Canada as Ottawa is able to shift its budget burden to the provinces as a means of imposing federal goals regarding fiscal restraint and deficit reduction at the provincial level. Rocher and Nimijean, on the other hand, suggest that Ottawa has attempted to maintain its ability to intervene in the economy, in spite of changes at the international level that suggest otherwise, by pursuing a policy agenda promoting both centralization and decentralization on economic and constitutional issues.[72] Although these studies focus primarily on developments at the domestic level they still offer greater insight into issues of state autonomy and domestic and international levels of analysis than most other studies of Canadian federalism.

There are also two other contributions that directly address these issues in relation to international economic regimes such as the FTA and the NAFTA. Ian Robinson has argued that the legal restrictions and market forces associated with these agreements have limited the freedom of the provinces to pursue independent initiatives in the international community.[73] In terms of legal restrictions Robinson suggests that the inclusion of more areas of provincial jurisdiction and the adoption of stronger federal state clauses in these agreements, have a direct impact on the ability of the provinces to pursue independent external policy initiatives. Robinson also argues that provincial governments face greater market pressures in the sense that they must compete with one another, in addition to other states in the international system. Finally, Robinson suggests the provinces can be controlled by using the federal spending power to cut transfer payments for shared cost programs to those provincial governments that fail to cooperate with Ottawa's foreign policy agenda. Courchene, on the other hand, suggests the debt and deficit burden that accompanies globalization has produced fiscally driven decentralization.[74] In other words, in contrast to Robinson, Courchene suggests that continental market forces continue to limit the financial resources available to the federal government. Therefore, the result is greater decentralization due to North-South capital flows which further limits the ability of the federal government to maintain control over the policy process. Courchene also makes the valid point that Ottawa has not used the spending power in the past to manipulate the provinces on matters of foreign economic policy and it is unlikely it would today, even if it had the financial resources to do so.

In a recent volume of essays Daniel Drache and Meric Gertler also suggested that market forces have a direct impact on the domestic policy agendas of states in the international system.[75] Specifically, they argue that in response to market forces states have a responsibility to adopt long-term strategies that focus on industrial policies stressing equity and income redistribution. In the same volume Jeanne Kirk Laux also laments privatization and suggests that states have the ability to maintain some control over the neo-liberal economy and that state enterprises must be a part of any "progressive" domestic political economy.[76] Although these contributions inevitably focus on issues of state autonomy and traditional arguments regarding centralization and decentralization they are also important in the sense that they introduce the potential relevance of societal variables. Admittedly, as with most statist political economy approaches, these authors are pre-occupied with questions regarding the "role of the state" in the international system but, at the same time, they also indirectly introduce the importance of other non-territorial and/or non-governmental domestic actors. In other words, the state's response to market forces carries with it the risk of alienating and empowering large segments of domestic society which in turn can further limit state autonomy.

Obviously, in terms of the existing literature, approaches adopting a political economy perspective touch on a number of the theoretical issues addressed by Black and Smith. Which of these offer the best account? The focus of this analysis would tend to reinforce the conclusions of Stevenson and Courchene. At the same time, however, it is important to note the potential shortcomings of statist political economy frameworks. Although they acknowledge issues of state autonomy and the impact of non-territorial variables such as market forces they ultimately fail to address the full range of pressures influencing developments at the international and domestic levels. Specifically, state autonomy is not simply about centralization and decentralization. Each of the authors reviewed here all make relevant observations about the current reality of Canadian federalism but there is a need to recognize that in addition to market forces, there are other international and domestic variables that both reinforce and limit the autonomy of each level of government. Therefore, an appropriate analytical tool must be able to account for long-term change. Put simply, although these authors all raise a number of provocative arguments they essentially focus on one issue, centralization versus decentralization. While this is a completely valid observation it fails to address what is perhaps a more relevant question, namely how both levels of government are losing autonomy to a number of international and domestic variables, including regimes and other societal actors.

Theoretical Challenges - International Relations Theory

As the following discussion suggests international relations (IR) theory has also responded to developments in the international political economy (IPE). In fact, a number of IPE studies have directly engaged the issues of change, state autonomy, and the reciprocal importance of international and domestic levels in their analysis. Given the focus of these efforts it is perhaps not surprising that IPE has increasingly questioned the traditional realist assumptions that have historically dominated international relations theory. In response to these challenges realists such as Stephen Krasner have arguably co-opted IPE into the traditional theoretical debates that are central to IR theory. The debates within IPE, however, still provide considerable insight into the increasing intrusiveness of international economic regimes such as the NAFTA. Specifically, interdependence theory, hegemonic stability theory, regime theory, and the critical responses to these approaches, all suggest that transnational variables are currently challenging state autonomy. While hegemonic stability and regime theory still arguably adopt a somewhat state-centric focus there are alternative frameworks that offer explanations of change that do not rely on issues of anarchy and the distribution of power. Furthermore, many of these contributions also point to the increasing relevance of both internal and external actors and address the linkages between international and domestic levels of analysis. By working from these contributions and introducing "intrusive interdependence" as an alternative theoretical model this study attempts to overcome some of the combined theoretical weaknesses of all three sub-fields of political science.

It would be a mistake to simply categorize IPE as nothing more than an extension of the historical liberal/realist debate within IR theory, yet both perspectives offer some insight into the current pressures facing states in the international system. While realist and liberal approaches both separate politics and markets, they have very different perspectives on the importance of states and economic globalization. Realist theory assumes that states are the primary actors in the international system, that the environment in which they co-exist is anarchic, and as such, governments are forced to focus on issues dealing with war, peace, security, and order.[77] Liberal IR theory, on the other hand, while promoting the pursuit of individual rights in both a political and economic context, also focuses on the development of liberal democracy, the creation of international law and institutions designed to promote global cooperation, and the reality of social integration in an era of increasing technological development.[78] In separating politics and markets, however, both approaches limit their flexibility in terms of better understanding contemporary developments in the international system. The reality of the post-war economic order is such that previous

conceptualizations of state and market interaction are no longer adequate. Most observers agree that the market system has become "internationalized" and increasingly outside the control of individual governments. This is not to say that states are no longer relevant. In fact, states "remain the principal (and, indeed, the only legal) decision-makers in the anarchic international order, and they continue to respond to essentially domestic political constituencies."[79] At the same time, however, "they are far from possessing all the political and economic resources [necessary] to continue meaningfully to shape the direction of political and economic development in line with national preferences."[80] Corporations, associations and governmental institutions are no longer restrained by national borders and the activities of each often have a direct impact on the other. The contemporary reality is such that we "live in an international system characterized by a high degree of interdependence among states and their societies, at least a high degree in relative historical terms."[81]

In the early post-war period theories of functionalism and interdependence emerged to challenge the contributions of realists such as Hans Morgenthau and E.H. Carr.[82] Early functionalists such as David Mitrany stressed the importance of knowledge and the on-going evolution and development of cooperation in the form of international regimes. Mitrany acknowledged that regimes may be weak in the contemporary international environment but these organizations would eventually evolve into a form of de facto world government. Central to Mitrany's thesis was his belief "that within the context of regular international meetings governmental and non governmental experts better understand common interests, realize the benefits of international cooperation, and gradually develop new political loyalties."[83] This concept, also known as the "spillover" or "transferability hypothesis," was offered by Mitrany as an alternative to the strong federalist perspectives on European unity being discussed in the immediate post-war period. Both approaches shared a belief in the inability of states to promote human welfare and/or provide security. Functionalism, for example, frowned on political or constitutional solutions to these problems. The territorial state-building elements of European federalism, with its rigid constitution and varied areas of jurisdiction, were viewed cautiously by functionalists who felt that these linkages could pose a serious security threat within the European community.

Ernest Haas, whose early work focused on the European Coal and Steel Community, adopted Mitrany's "spillover" thesis to explain how institutions had an impact on the growth of common international loyalties and governance. Haas "focused on different sociological factors underlying political integration -- in particular the emergence of transnational groups and patterns of homogeneity."[84] Unlike Mitrany's functionalism, however, Haas adopted a more neo-functionalist approach in his analysis of the

transformation in Europe. Neo-functionalism was a view of integration that combined federalist goals with functionalist strategies. It was largely an American-centric explanation that focused on the then popular academic areas of bargaining, decision making, interest group pluralism, and political development. In his early work Haas envisioned a new political community overlying the existing European continent. In later efforts, however, Haas backed away from many of these conclusions and began to deal with integration on a broader and less demanding level. Haas believed that neo-functionalism was a much more sophisticated approach than basic functionalism. Both he and Mitrany offered a link to previous liberal theorists in a period dominated by realist thinkers. Both focused on the rising technological interdependence among states, the idea of an indirect long-term attack on national sovereignty through the enlightened self-interest of governments and interest groups, and the focus on institutionalization as a means of measuring the progress of integration. As Charles Pentland has noted, functionalist theory formed a crucial link with later liberal institutional approaches: "Through the scholarly writings of Mitrany and Haas... functionalism drew together a set of scattered and preliminary ideas based on the experience of international interdependence and co-operation in the late 19th and early 20th centuries, gave them a certain clarity and cohesion, and so laid the foundations of some important theoretical developments in the 1950s and 1960s."[85]

By the end of the 1960s a number of scholars in international relations theory turned their attention to the study of international political economy (IPE). Mitrany and Haas kept liberal theory alive in the post-war period. They did little, however, to reconcile the theoretical distinctions between politics and economics. Realists also remained uninterested in better understanding the dynamics of what they continued to see as separate domains. International political economy, on the other hand, offered an alternative approach that focused on phenomena "at the cross-roads of the traditional fields of political science and economics. It sought to explain how political power shaped economic outcomes and how economic forces constrained political action."[86] Political economy focused on both politics and economics but did not simply combine the two disciplines. Instead it attempted to look at relevant elements of economics and political science while critiquing the scope and methods of both approaches. As George Crane and Abla Amawi have suggested, such a focus has naturally impinged "upon the customary domain of international relations. Indeed the recent renaissance of IPE is in part a response to perceived shortcomings in the dominant realist paradigm of international relations."[87] As such, the boundary "between the international and the national is not rigidly fixed in the IPE literature. Some IPE arguments are applied across levels of analysis, while others logically lead to a national or subnational focus."[88] Interdependence theory, building on

the functionalism of Mitrany and Haas, provided the foundation for academic interest in IPE throughout the 1970s. During this period it became clear that the static and ahistorical nature of realism failed to provide an adequate framework for trying to understand a world in which economic, ideological and cultural issues were becoming increasingly more important. In contrast to structural realists, such as Kenneth Waltz, interdependence theorists argued that history, technology, and the dialectical relationship between the international and national all contributed to what were perceived to be dynamic changes in the international system.[89] While Raymond Aron and Richard Cooper had touched on these issues in the 1960s, Robert Keohane and Joseph Nye are generally considered to be the architects of contemporary interdependence theory.[90] Keohane and Nye "make no claim to having 'discovered' transnational relations"[91] but expand on earlier general discussions of increased or decreased interdependence. Keohane and Nye's first edited collection of essays, *Transnational Relations and World Politics*, and "their now classic 1977 *Power and Interdependence*, go a good ways further toward systematic discussion and delineation of the properties and implications of transnationalism, interdependence, and complex interdependence."[92]

The "world politics paradigm" first presented in *Transnational Relations and World Politics* is a good example of how interdependence literature challenged the popularity of "traditional" realism during this period. The tool of analysis outlined by Keohane and Nye was designed primarily as a means of overcoming the weaknesses of the state-centric approach. The world politics model attempted to broaden "the conception of actors to include transnational actors and by conceptually breaking down the 'hard shell' of the nation-state."[93] According to Keohane and Nye, actors in world politics existed on two dimensions: one which outlined the degree to which participants were governmental or non governmental in position; and the other which focused on the extent to which actors consisted of centrally controlled organizations rather than transnational institutions or sub-units of government. It was the second level that traditional state-centric paradigms failed to take into account. In this dimension centralization of control involved the "realization that sub-units of governments may also have distinct foreign policies which are not filtered into a unitary actor model."[94] By combining the international activity of both dimensions realism failed to account for a significant amount of important interaction across state boundaries identified by the world politics approach. The recognition of this activity gave one "an idea of the richness of possible transnational coalitions that determine outcomes in world politics... [which were] largely relegated to the subsidiary and largely undifferentiated category of environment."[95] Ultimately, the "concept of transnational relations called attention to the activities of sub-units of governments or intergovernmental

organizations as well as to the behavior of individuals and non governmental organizations."[96]

Transnational Relations and World Politics was an attempt to introduce a broad theory of interdependence. It was also clear that these initial ideas required further elaboration. An attempt to address these weaknesses came with the publication of *Power and Interdependence* in 1977. Keohane and Nye wanted to move past the realist-liberal extremes that dominated most academic debate. Central to this goal was the recognition that the international system was both structure and process. For Keohane and Nye, "a realist analysis of international relations based on system structure alone was incomplete, and the realist tendency to regard 'process' as a variable of unit capability alone was an oversimplification. Processes, too, are systemic, they argued; even though they are generated by and on behalf of units, with time they develop a dynamism of their own."[97] In order to accommodate realist limitations in terms of structure and process Keohane and Nye developed two ideal models of international relations, each at opposite poles on the same continuum. At one end was realism with its state-centric focus, reliance on force and military capabilities, and its hierarchy of issues. At the other was "complex interdependence" with its characteristics of multiple channels of interaction, diminished utility of military force in interstate relations, and its blurred agenda of both "high" and "low" issue areas. For Keohane and Nye complex interdependence offered a means of evaluating developments in the international system that avoided the ahistorical and static characteristics of traditional realism. At the same time, however, both authors also acknowledged the explanatory weaknesses of complex interdependence. In their words, the "real world... involved myriad situations falling all along a continuum between the two [poles]. ... At the level of theory, both balance of power and complex interdependence as *general* explanations of international affairs were unrealistic in the extreme."[98]

What caused international relations theorists to devote such enthusiasm to the study of interdependence? In the first place, academics during this period were becoming increasingly aware of the impact of international trade, monetary investment, and energy relationships on the formulation of foreign policy. Economic interdependence was not a new concept to most states in the international system but by the 1960s balance of payment deficits and the sensitivity of the United States dollar suddenly made Americans aware of their own economic vulnerability. As in other matters "before and since, Canadians and others then witnessed the always impressive spectacle of American scholars excitedly discovering something the rest of the world had long taken for granted, and transforming it into a productive and innovative academic industry."[99] The second and third reasons were both directly related to the theoretical evolution of IPE. Marxist and Latin American

dependency approaches were extremely popular and influential during this period and liberal theorists were searching for an alternative with a solid empirical base. As Pentland has suggested, "analysis of bargaining relationships and of the institutionalized management of interdependence seemed to provide an appropriate research agenda for this purpose."[100] The third reason was related to the failure of liberal institutional approaches, such as functionalism and confederalism, to adequately deal with the development of international organizations during the 1950s and 1960s.[101] Earlier integration theory, attempting to explain forces behind post war plans to unify Europe, had begun to lose credibility by the early 1970s and the European Community seemed to be an example of complex interdependence among industrialized nations rather than regional integration. The analysis of "interdependence - its dimensions, its effects, its management - devoid of the teleological baggage of neo-functionalist integration theory, seemed an attractive way out of the theoretical impasse in which liberal institutionalism found itself."[102]

Interdependence theory reflected the efforts of a number of scholars in the early years of IPE. Theoretical contributions from this period were dominated by an anti-statist bias and a desire to include economic variables traditionally excluded from the peace and security issues of traditional realism. As Richard Leaver has noted, however, the "development" of interdependence theory also highlighted "a major fork in the evolutionary pathway along which IPE scholarship unfolded. One road pointed to the development of the theme of societal interdependence, while the other placed the state back at the center of IPE."[103] These divisions were especially evident in the proliferation of hegemonic stability and regime theory literature that evolved out of the interdependence-based alternatives of Keohane and Nye.[104] Krasner, for example openly questioned the "creeping socialization" of the IR discipline and was critical of students of international relations who had "multinationalized, transnationalized, bureaucratized, and transgovernmentalized the state until it [had] virtually ceased to exist as an analytical construct."[105] Robert Gilpin, in his analysis of the role of the United States in the collapse of the Bretton Woods system, also suggested that states continued to control political and security linkages and that transnational variables, such as multinational corporations remained dependent on existing hegemons.[106] Even Keohane subsequently argued that regimes were often dependent on a single powerful state responsible for underwriting the costs of these arrangements. Keohane, however, distanced himself from other realists in his observations of hegemonic decline.[107] Specifically, he acknowledged a more "Grotian or modified-structuralist argument in that actors may learn to co-operate and, therefore, may come to value a regime (thus, that regimes may affect, perhaps transform, the interests and the interest calculations of participants)."[108] Therefore, Keohane felt it was possible for these arrangements to

survive the defection of a hegemon if a strong mutuality of interests existed and if other capable actors came forward to support the regime. While retaining a state-centric bias, Keohane does imply a degree of cooperation that is generally inconsistent with the anarchical nature of structural realism.

Gilpin and Keohane both suggest that states continue to be the most important actors in the international system. Regardless, some realists counter that these contributions have more in common with functionalism that traditional realism. These critics label Gilpin and Keohane as "liberal institutionalists" and suggest that both authors limit their focus to explaining cooperation where states are not opposed instead of examining situations where the interests of participants are conflictual with those of the regime. These same critics also argue that the focus of liberal institutionalism is limited in its assumption that the biggest obstacle to cooperation is cheating. Under this logic regimes develop rules to follow and create environments in which participants are willing to accept short-term losses for long-term gains. Regimes also increase transactions between states, making it much more difficult to break the rules without getting caught, and participants are also reluctant to cheat for the fear of future reprisals. For some realists these assumptions do nothing to explain the anarchical nature of the international system or the fundamental norms of state behaviour. It simply says that rules can reduce cheating. Realists do not deny that cheating is a major barrier to cooperation, but suggest that liberal institutionalism fails to address the key issue of relative gains. By assuming that states are atomistic actors seeking to maximize absolute gains (collective gains) liberal institutionalists fail to acknowledge the negative aspects of these relationships, namely concerns regarding the gains of other participants in these cooperative arrangements (relative gains).[109]

Despite these concerns a number of observers still believe that liberal institutionalism, with its emphasis on anarchy and the autonomous state, remains closely linked to traditional realism. After all, hegemony and regime theory tend to be mutually supportive of one another and both seem to "derive from a single evolutionary movement away from ideas about societal interdependence and toward ideas about the hegemonic state."[110] Perhaps not surprisingly, these critics have a much different interpretation of the shortcomings of liberal institutionalism than their realist counterparts. Pentland, for example, points out that realists and liberals have very different perceptions of the empirical evidence of interdependence and that these basic assumptions have a direct impact on any analysis of regimes in the international system. "The former tend to insist that nations' behaviour demonstrates mutual vulnerability - a characteristic both difficult to measure and likely to fluctuate over time - while the latter are content to infer interdependence and the growth of community from the quantitative increase in international linkages."[111] By

focusing on interdependence, and the pressures of collective management that flow from these linkages, Pentland argues that there is a considerable difference between liberal regime theorists and realism. As Pentland notes:

> Most would accept that interdependence, both physical and "felt," has been on the rise since World War II at least. If it does not pose a threat to the continuation of the nation-state or the state system, it does provide new constraints and opportunities for governments seeking to maximize their interests in the international political economy. For the last decade or more, [theorists and policy makers] have turned their attention to international regimes as a response to the need to manage interdependence collectively.[112]

By bringing cooperative behaviour "into the heart of international relations theory, a serious challenge to contemporary realist theory [emerges]."[113]

One author who addresses a number of these issues is Mark Zacher. Zacher acknowledges the importance of international regimes but differentiates himself from realists in his belief that a growing number of states are becoming increasingly more willing to accept the loss of autonomy that accompanies membership in these organizations. As Zacher points out, these developments are "an inevitable product of the multiple and growing interdependencies among states which create conditions and problems that require cooperative responses and solutions."[114] Central to his thesis is the observation that variables other than power affect interstate relations and that anarchy in the international system is diminishing to the point where regimes are starting to make a noticeable difference. In essence, Zacher's approach "involves the enmeshment of states in a network of explicit and implicit international regimes and interdependencies that are increasingly constraining their autonomy."[115] Despite the importance of these transnational variables Zacher does share some similarity with other realists in that he is not looking to undermine the centrality of states in his analysis. Zacher simply suggests that states are being challenged by forces they do not control. Zacher is also willing to concede that states could possibly become secondary actors "in the long term; but it is unlikely in the first half of the twenty-first century."[116] Ultimately, it is this projection of the willingness of states to sacrifice autonomy over an extended period of time that many other realist authors fail to accept.

Oran Young has also challenged traditional concepts of sovereignty and the "role of the state" in the contemporary international system. By examining the effectiveness of international regimes Young has concluded that it is wrong to assume that "the international system is composed of sovereign states limited only by the balance of power."[117] Young suggests that states and other international actors cooperate and co-exist as a result of

patterned behavior which generates common expectations and in turn contributes to the evolution of regimes. As Young points out:

> This leads to conventionalized behavior in which there is some expectation of rebuke for deviating from on-going practices. Conventionalized behavior generates recognized norms. If the observer finds a pattern of interrelated activity, and the connections in the pattern are understood, then there must be some form of norms and procedures.[118]

Young also argues that the "effectiveness" of regimes offers considerable insight into the increasing loss of state autonomy in the international system. In simple terms effectiveness is the ability of a regime to impel participating actors to behave in a different manner than if that particular institution did not exist. Although the measure of institutional effectiveness is somewhat ambiguous Young presents several "hard cases" that reinforce his assertion that regimes limit the options available to participants in international organizations. Young suggests that "hard cases" are those in which cooperation exists even where there is strong incentive and opportunity for defection. By examining the long-term success of regimes such as the General Agreement on Tariffs and Trade (GATT), which negotiates and enforces contentious economic issues, Young concludes that "international regimes and, more broadly, international institutions do matter."[119]

In addition to Zacher and Young, Richard Higgott has also questioned realist assumptions of hegemony and regime theory in his study of non-hegemons and global order. Specifically, Higgott examined the roles of smaller states in regimes and concluded that lesser powers, in this case Australia and its role in the Cairns Group at the GATT, could have a significant impact on international organizations. In the study Higgott critiques previous realist contributions and the assumption that the United States has been the provider of "public goods" in the post-war era. Even if American hegemony did exist following the Second World War Higgott argues that such an approach is no longer relevant in the global economic order of the 1990s. As Higgott points out, authors such as Keohane "pay little or no attention to the role, at either a theoretical or practical level, that other smaller actors might play in the processes of cooperation and institution building in the international political economy."[120] As a result, Higgott concludes that IPE needs to re-examine the "role of the state" in the contemporary international system. As with Zacher, Higgott is not trying to suggest the demise of the nation-state. He simply argues that a new complex conception of the state and state action is necessary. Specifically, Higgott believes that by "asking a range of questions that take account of agents and structures in different temporal and spatial domains... [one] makes nonsense of Gilpin's [and others] assertion of the enhanced authority of the state in recent times."[121]

Finally, it is important to acknowledge Susan Strange's attempts to overcome the theoretical shortcomings of hegemonic stability and regime theory. Strange's biggest criticism of IPE in general, and regime theory in particular, is its assumption that it provides a potential general theory capable of universal application to all issues. Specifically, Strange believes that although liberal institutionalists may improve contemporary understanding of the international system the state-centric focus of the approach does little to contribute to the evolution of long-term knowledge. For Strange, the key variables are markets and the bargains made between actors and participants in the global international economy. By studying markets, which Strange accepts as creations of state policies, it is possible to understand better such basic structures of the world system as security, production, trade, transport, and welfare. Not only does this approach allow analysis to be separated from limiting variables such as ideology but "it also breaks the confining limits set when regime analysis identifies an international regime with the existence of a particular international agency or bureaucracy."[122]

Ultimately, Strange thinks that the dynamic character of the international economy is best captured not by looking at regimes but rather on the bargains beneath the surface on which regimes and other institutions are based. By including firms as part of her network of bargains Strange attempts to address the level of analysis problem in IPE. At the same time, however, Strange disregards the potential impact of other "institutional" domestic actors, such as sub-national governments, choosing instead to "lump" these relevant participants in the policy process under the rubric of the state. Her outright rejection of realism also downplays the significance of anarchy and independent sovereign nations, two variables that remain, albeit diminishing, constants of the contemporary international system. In attempting to introduce her concepts of primary and secondary structures Strange tends to fall victim to the same criticism she levels at regime theory, namely extensive jargon and her critique of conceptual "wooliness."[123] Her focus on the structures of credit, justice, and freedom of choice are also based on largely western-based concepts of needs and wants that do not apply consistently across different cultures and societies. By focusing on firms and networks of bargains Strange can be criticized for incorrectly characterizing the true character of the contemporary international system. Do firms really engage in the same diplomacy as states? Is state security not still relevant to modern production and the trade of goods and commodities? Most of these admittedly "realist" arguments still reflect the reality of economic and political interstate relations. Although Strange should be commended for attempting to break down the theoretical walls that exist in IPE her efforts are not without their own exclusionary and often ambiguous bias.

From the preceding discussion it is obvious that hegemony and regime theory have come under attack from both liberals and realists in recent years. It is also clear, however, that these critics fail to offer a complete and/or superior theory of the contemporary international system. By focusing on regimes and cooperation liberal approaches tend to emphasize rules and institutions and in the process diminish the ongoing relevance of anarchy and sovereignty in the contemporary international system. There is also a tendency to stress the positive aspects of cooperation and little attention is given to exploitive or imposed regimes. In terms of addressing the links between politics and markets liberal approaches also suffer from diffuse terminology, imprecise concepts, and generalized conclusions. The concept of the "market", for example, fails to acknowledge the fact that markets differ from country to country, are shaped by socio-cultural institutions, and as one observer has noted "are intimately interconnected with other aspects of human existence."[124] Furthermore, the ahistorical nature of liberalism has failed "to account for the history of political conflict that led to the emergence of the institutions of the market and neglects the ongoing political conflict that has altered the institutions of the market over time."[125] This is most apparent in the inability of liberalism to reconcile the obvious differences between the laissez faire economics of the nineteenth century and the mixed economy of the post-war period. In sum, although liberalism arguably provides considerable insight in terms of the importance of international economic regimes it still fails to provide an adequate theory for explaining the complexity of the contemporary international system.

At the same time, however, neither does realism. In the words of Geoffrey Underhill there "are a number of problems with the neo-realist approach to IPE in general and the theory of hegemonic stability in particular."[126] The most common critique of hegemony is the simple fact that it is historically inaccurate. If the United States was in fact the dominant hegemon of the post-war era its policy positions should have been reflected in the liberal economic regimes of the period. In reality, "the era of liberalization did not correspond to the putative period of hegemony, and the United States was as inconsistent as the rest in promoting a liberal order."[127] The arguably declining role of the United States has also failed to prompt a collapse of the liberal international system as most theories of hegemonic stability predicted. In fact, the successful completion of the Uruguay Round, which brought down tariff and non-tariff barriers in a number of highly contentious sectors of the international economy, suggests that liberal economic regimes such as the General Agreement on Tariffs and Trade and the newly created World Trade Organization are both increasing in significance and appear to have significant support from non-hegemonic sources. This is not to say that concepts of power are immaterial or that

threats to the liberal economic order do not exist. It is simply an observation that declining United States hegemony has not marked the demise of international economic regimes and cooperation.

As already noted, one of the main weaknesses of realism, especially for the purposes of this analysis, is its outright rejection of developments within the state.[128] As Underhill suggests, by excluding "the content of domestic politics of influential states in the system, [neo-realists] are [unable] to understand with any clarity why states pursue particular policies with regard to international economic regimes."[129] Realists, by limiting analysis to simple connections between anarchy and power at the systemic level, also fail to characterize state actions as what they truly are, notably "the result of the complex political processes that link the domestic *and* the international levels of analysis."[130] Politics occur at various levels, both within the state and between states in the international system. Neo-realist and hegemonic conceptions of the state as a unitary rational actor are inadequate if one wants to understand the constraints and opportunities for actors in both the international and political domains. According to Underhill an explanation of how domestic and international structure sets the parameters of political conflict is needed. One needs to disaggregate the state and focus on social groups, and market actors and the role they play in terms of the "politics" of the state. While the state remains the primary actor in the international political economy it is not the only one of consequence. The goal is not to disregard the continuing significance of the state, but rather the way it is conceived in neo-realist and hegemonic contributions to IPE.[131]

Intrusive Interdependence

To this point the review of the literature has succeeded in its main task, namely in outlining the theoretical limitations of Canadian foreign policy, Canadian federalism, and international relations theory, especially in terms of understanding the intrusiveness of economic regimes such as the NAFTA. This critical review, however, is not an effort to discredit these sub-fields. It is instead a necessary process in order to develop an improved framework of analysis. This, of course, is not an easy task. Most observers suggest that in order to do this any new "approach" must not only address the separation of politics and economics but also provide a flexible model to evaluate issues of state autonomy and domestic and international levels of analysis. It must also recognize that both economic and political developments, "like all social action, consist of institutions and institutionalizing processes... [and that] these actors are guided [not only] by formal organization but also by more informal conventions habits and routines which are sustained over time."[132] As Underhill suggests, to understand the impact of economic regimes such as the NAFTA "we

need to theorize these connections between markets and politics, domestic and international, and through our understanding of the state."[133]

Perhaps one possible solution is to link the "state" with the broader concepts of economic structure and politics. This can be accomplished by examining the relationships between "the self-interest of *agents* or *actors*, whether they be individuals, formal or informal groups, or the corporate economic entities known as firms."[134] Attempting to better understand the "state-society complex" is nothing new. As Underhill points out it was the relationship between individual self-interest and the collective needs of the community that inspired Adam Smith to write *The Wealth of Nations* in 1776.[135] The key, however, is to shift the focus on structure away from realist conceptions of anarchy and distribution of capabilities toward a more flexible understanding of economic and political relations. In doing so, Underhill suggests it is possible "to come to grips with the material self-interest of political economic agents, and of key social groups, at domestic and international levels of analysis."[136] This does not mean that anarchy is irrelevant. As already noted there is considerable evidence to suggest that anarchy remains a key organizing principle in the international system. What is needed is a theoretical framework that allows one to conceptualize the transformation of an international system where the ordering principles of realism are less relevant as interstate relations become more transnationalized. While structural arguments have been extensively criticized in international relations theory, they are perhaps the key to building a more successful theoretical model. What one means by structure and how it is employed as part of theory are the most important things to consider. As opposed to realist perspectives of anarchy, structure should not be considered a causal variable that determines outcomes. To provide the needed flexibility to understand a system in transition structure should provide a framework that informs "one of the terms under which the political interactions of particular agents or groups occur at a particular time in history."[137]

By adopting this approach it is possible to overcome a number of the weaknesses of the existing literature. In the first place it accepts that a number of actors, both domestic and international, will have an impact on the policy preferences of states. These policy options, however, will be determined by available resources as well as the relative position of a given actor in the international system. Uncompetitive firms, for example, will advocate a nationalist protective policy whereas those companies with direct ties to the transnational economy will call for the institutionalization of liberal economic regimes. Both of these positions have the potential to influence individual states on issues in the international political economy depending on the economic and political power of participants at the domestic level. Obviously those domestic actors with adequate

resources, close institutional ties, and/or the ability to form a coalition of interests will have the most success in influencing policy. Regardless, if a state is marginalized at the international level it goes without saying that the international impact of these domestic actors will be limited unless transnational links between firms or other non-governmental organizations can be initiated. While this arguably reflects realist arguments focusing on the distribution of capabilities it does recognize the importance of international-domestic linkages absent from anarchical structural approaches. It also reflects the current reality of the contemporary international system. Despite the increasing importance of interdependence the distribution of capabilities remains a valid and functioning aspect of interstate relations. As such, it recognizes the presence of liberal and realist characteristics of a changing international system.

These observations clearly focus attention back on the state. States require the support of domestic constituencies to maintain power and legitimacy at the domestic level but are also forced to balance these concerns with other international commitments. Anyone familiar with the completed Uruguay Round of the GATT understands the contradictory demands faced by a number of states in terms of domestic actors and commitments negotiated at the international level. As such, the state remains important in reconciling these contradictions. At the same time, however, increasing transnationalization has reduced the internal and external "economic space" that governments control. As Underhill points out, this is the crux of management problems that emerge as a result of changes in the contemporary political economy. It implies a "pressing need for cooperative management structures in the international setting, but the political constituencies and institutions of such cooperation are relatively underdeveloped."[138] Currently the state remains the focal point of the political conflict between structure and institutions. As the system continues to change, however, it is unclear how long this may last.

The decline of state autonomy and the increasing significance of "politics" presents a direct challenge to neo-realist conceptions of a structural system based on anarchy. If one accepts these conclusions it also shifts the theoretical focus toward process variables and away from structure. Politics implies a two-way relationship between structure and agents and this in turn shapes the options and constraints available to relevant domestic and international actors. Therefore, the "impact of structure lies not in some inherent, self-contained quality, but in the way a given structure at specific historical moments helps one set of opinions prevail over another."[139] As Underhill suggests, "the changing structure of the international economy and the regimes/institutional patterns that mediate it are shaped by the political conflicts occurring at domestic, transnational, and international levels of

analysis, and vice versa. There is a two-way relationship between structure and process, domestic and international, mediated by changing institutional patterns."[140] Currently these relations exist in an international system in which the influence of the market and the lack of an overarching political authority are both a reality. Therefore, the interdependent nature of the system directs attention toward both political and economic linkages that are an undeniable by-product of these relations. The outcome of this activity is determined by the complex interaction of structural and process variables. As Underhill notes, we "simply live in a system of multiple state sovereignties 'which is interdependent in its structure and dynamics' with the transnational market economy, but not reducible to it."[141]

Underhill's efforts to break down the relevance of neo-realism in contemporary international relations theory is an important contribution to the discipline. At the same time, one is left with the impression that Underhill calls for a research agenda that is somewhat vague. Is it enough to simply recognize that transnational actors participate in and complicate relations at the domestic and international levels? To explain political, economic, domestic and international activity as a "blur" is unacceptable if one is to theorize about the reality of the contemporary international system. Without some kind of theoretical reference point Underhill is essentially advocating a conceptual framework that recognizes the importance of all variables without explaining how "change" occurs in the international system. Although we are clearly moving away from a system of interstate relations based on anarchy Underhill does not outline how neo-realism will be replaced by a system of "multiple sovereignties" which is independent in its structure and dynamics. What is really needed is an approach that recognizes the evolution of the international system and combines relevant neo-realist constructs as well as the interaction of structure and process.

This goal was articulated by Robert Keohane and Joseph Nye when they acknowledged the need to include domestic variables in their framework of complex interdependence. They correctly noted that:

> any system level analysis will necessarily be incomplete. As we have emphasized, to understand systemic processes such as those of complex interdependence, we need to know how domestic politics affects patterns of interdependence and regime formation. This entails a reciprocal comprehension of how economic interdependence and institutions such as international regimes affect domestic politics. Both structural theory and the broader process-oriented version of systemic theory... are inadequate by themselves.[142]

What Keohane and Nye provided that Underhill does not is a theoretical framework consisting of a continuum with each end representing an "ideal" model of international relations. One pole represented "realism" with its state-centric focus and the other

introduced "complex interdependence" with its multiple channels of interaction. Both poles were theoretical and abstract extremes with the "real" activity of the international system occurring somewhere between each end of the continuum. Complex interdependence gave observers a flexible tool to evaluate developments in the international system. It acknowledged that anarchy and realism continued to exist but that characteristics of cooperation and the participation of transnational actors were also a definite reality. What it failed to do, however, was successfully incorporate domestic variables.

What would appear to be required is a synthesis of Keohane and Nye's early work and Underhill's efforts to develop a more successful approach to international relations theory. By introducing the concept of "intrusive interdependence" it becomes possible not only to elaborate on Keohane and Nye's continuum of complex interdependence but also to integrate realist assumptions with Underhill's "blur" of international and domestic activity. As the international system evolves, the anarchic structure of realism becomes less relevant as does state sovereignty and the dominance of security issues. In the process the neo-realist structure and its characteristics are relegated to the process level and simply become one of a number of complex variables that determine the outcome of relations between relevant actors. The idea that anarchy and state autonomy are becoming less relevant is not new. Zacher, Young and Strange have all addressed these issues. Robert Cox has also argued that "out of the crisis of the post-war order, a new global political structure is emerging."[143] If one accepts intrusive interdependence as the base of the changing world order, however, more of the underlying principles of Underhill's critique can be adopted. As the intrusiveness of the structure evolves, and markets, firms, and non-governmental actors increase in significance, states begin to relinquish autonomy to international regimes and to domestic actors, such as sub-national governments and multinational corporations, both voluntarily and involuntarily. In addition, the intrusiveness of the system begins to break down the lines between what is international and what is domestic. Opportunities for domestic actors at the international level increase as the "disaggregation of the state" continues. What were previously latent domestic interests become empowered as the intrusiveness of the system increases. The majority of domestic actors may initially lack the interest and resources to pursue these opportunities. Participation by firms, social groups and others will, however, inevitably increase as these linkages develop and the distinction between international and domestic domains decrease.

It is important to note that increasing pressures on state autonomy will not automatically reinforce the anarchical nature of the international system. Anarchy remains a relevant variable. Intrusive interdependence, however, allows for change that may ultimately lead to more order and stability as states are no longer able to control

globalization and the distinction between international and domestic levels of analysis becomes less relevant.[144] In fact, it is possible to envision a system in which order exists in conjunction with both conflict and unified and disconnected participants. These issues are addressed, at least to some degree, by James Rosenau in his analysis of governance in the international system. According to Rosenau it is possible to have a system of global governance that includes many different competing interests, each co-existing with one another in an often uneasy and friction-filled relationship. As he points out, "the organic whole that comprises the present or future global order is organic only in the sense that its diverse actors are all claimants upon the same earthbound resources and all of them must cope with the same environmental conditions, noxious and polluted as they may be."[145] Rosenau also suggests that any change that does occurs will ultimately be so fundamental that it will not unfold rapidly. In fact, the current "murkiness" of change associated with intrusive interdependence is such that opportunities for peaceful cooperation, higher standards of living, and greater recognition of human rights are just as possible as intensified conflicts, deteriorating environmental standards and weakened social systems. As Rosenau points out, "either set of arrangements, and possibly both, could evolve as leaders and publics get accustomed to the heady realization that some control over the future has been regained as a consequence of all the changes."[146]

Conclusion

Although security-based issues have dominated Canadian foreign policy throughout most of the post-war period it is clear that economic considerations have also played an important role in Canada's relations with other states in the international system. These trends are especially evident in terms of Canadian trade policy and Ottawa's pursuit of multilateral and bilateral economic linkages. At the same time, however, international and domestic developments have made it increasingly more difficult for the federal government to formulate and implement independent policy initiatives. Specifically, international economic regimes such as the NAFTA have become more intrusive in the sense that areas of domestic jurisdiction have become the focus of these agreements and have further contributed to the ongoing decentralization of Canadian federalism. In the short term these pressures primarily threaten the autonomy of the federal government but over time there is evidence to suggest that the provinces will also lose the capacity to act independently. By focusing on the NAFTA it becomes possible to speculate on the significance of these developments at both the international and domestic level. In doing so, however, this study points out the shortcomings of the literature dealing with Canadian foreign policy, Canadian federalism, and international relations theory in terms of addressing the

increasing intrusiveness of economic regimes and other questions dealing with issues of state autonomy and domestic and international levels of analysis. Perhaps more importantly, however, there is little indication that federal and/or provincial officials have adequately responded to the potential impact these changes might have on future policy initiatives. As the activity surrounding the NAFTA suggests policy-makers at both levels of government remain primarily concerned with short-term political considerations as opposed to developing strategies designed to achieve long-term domestic and international economic objectives.

All of these issues will be addressed in the following chapters. Chapter two begins by exploring Canadian federalism from an economic perspective with an emphasis on the various factors contributing to economic decentralization and the current empowerment of the provinces. Chapter three examines the intrusive nature of economic globalization and the proliferation of economic regimes, most notably the North American Free Trade Agreement, and the limitations they place on states, in this case the Canadian federal government, as they attempt to control developments in the international system. Chapter four outlines the historic activity of the provinces in the international system, especially in terms of provincial interest in economic regimes such as the GATT, the FTA, and the NAFTA. Chapter five addresses the evolution of the committee system that evolved out of the FTA and the NAFTA and also speculates on the motivations of the federal government in formalizing the role of the provinces in the policy process. Chapter six looks at the NAFTA side deals and the potential implications these intrusive agreements might have on Canadian federalism. Finally, chapter seven examines the potential long-term impact of intrusive interdependence on Canadian federalism, especially in terms of the political priorities of the provinces in reference to the North American Free Trade Agreement.

Endnotes

1. For the purpose of this analysis "autonomy" has both an internal and external dimension. Internationally, autonomy refers to the ability of states to pursue self-government and the sovereign recognition of other international actors. At the domestic level, nations and sub-national governments may pursue autonomy in the international sense but the term can also be used to describe the relationships that exist between internal actors and institutions. Traditionally, studies of these linkages have focused on questions of state autonomy and societal influence. Autonomy in this study, however, also refers to the inter-relationship that exists between the various institutions of the state, namely central and sub-national governments. While it is true that corporate and societal interests still rely on both federal and provincial governments to mobilize their interests it is clear that autonomy can no longer be limited to these types of state-society questions. To accurately reflect the current policy environment the concept of autonomy must also be extended to include the increasingly complex linkages that exist between actors and institutions at both the domestic and international levels. As the following chapters suggest, the increasing relevance of the provinces in matters of international trade has limited the ability of the federal government to pursue independent international economic policy initiatives. Although this results in greater autonomy in the short-term for the provinces in relation to the limitations imposed by international regimes their capacity to act independently will also be reduced in the future.
2. Tom Keating, *Canada and World Order: The Multilateralist Tradition in Canadian Foreign Policy* (Toronto: McClelland and Stewart Inc., 1993), p. 13.
3. James Eayrs, "The Origins of Canada's Department of External Affairs," *Canadian Journal of Economics and Political Science*, 25 (May 1959), p. 117, as cited in Kim Nossal, *The Politics of Canadian Foreign Policy* (Scarborough, Ontario: Prentice-Hall, 1985), p. 128.
4. Nossal, *The Politics of Canadian Foreign Policy*, p. 10.
5. Ibid.
6. Martin Wight, *Power Politics* (New York: Penguin Books, 1986), p. 65.
7. Ibid.
8. Ibid., p. 66.
9. Ibid.
10. Michael Tucker, *Canadian Foreign Policy: Contemporary Issues and Themes* (Toronto: McGraw-Hill Ryerson Limited, 1980), p. 8.
11. Robert Keohane has defined multilateralism as "the practice of co-ordinating national policies in groups of three or more states, through ad hoc arrangements or by means of institutions." As cited in Robert O. Keohane, "Multilateralism: an Agenda for Research," *International Journal*, 45 (Autumn, 1990), p. 731.
12. Barbara Ward, "The First International Nation," in William Kilbourn, ed. *Canada: A Guide to the Peaceable Kingdom* (Toronto: Macmillan, 1970), p. 46.
13. Ibid.
14. Lester B. Pearson, *Mike: The Memoirs of the Right Honourable Lester B. Pearson, Volume 2, 1948-1957* eds. John A. Munro and Alex I. Inglis (Toronto: University of Toronto Press, 1973), p. 121.
15. There were also members of External Affairs who saw a prosperous international system as a means of maintaining peace in the post-war period. In fact, many officials believed the outbreak of the Second World War was directly linked to the economic difficulties associated with the depression. As a result, a number of Canadian policy-makers felt that a more open system of international trade and finance would stimulate the creation of a more peaceful international order. In other words, for Canada, and for many other governments in the international system, a liberalized global economy was as much a

prerequisite for a peaceful international order as it was a means of securing domestic prosperity.

16. Michael C. Webb, "Canada and the International Monetary Regime," in A. Claire Cutler and Mark Zacher, eds. *Canadian Foreign Policy and International Economic Regimes* (Vancouver: University of British Columbia Press, 1992), pp. 153-185.

17. Jock A. Finlayson, "Trade and Global Interdependence," in David G. Haglund and Michael K. Hawes, eds. *World Politics: Power, Interdependence and Dependence* (Toronto: Harcourt Brace Jovanovich, 1990), pp. 283-310.

18. Although there are a wide range of rules and arrangements that have been negotiated under the auspices of the GATT the regime was essentially based on four fundamental principles. The first centered on the concept of "nondiscrimination" and/or the most-favoured-nation (MFN) principle. The MFN was outlined in Article 1 of the agreement and required all member-states to apply duties and tariffs equally to all GATT members. Trade liberalization, on the other hand, did not force states to eliminate tariffs but did commit these actors to the basic premise of a more open system. The principle of reciprocity suggested that countries that failed to comply with the provisions of these international agreements would be open to retaliatory action from other member-states. Finally, transparency and surveillance meant that the trade policies of states should be open and subject to evaluation on a multilateral level.

19. Keating, *Canada and World Order: The Multilateralist Tradition in Canadian Foreign Policy*, p. 122. For more information on Reid's work with the World Bank, Keating cites Escott Reid, *Radical Mandarin: The Memoirs of Escott Reid* (Toronto: University of Toronto Press, 1989). The Pearson Commission Report was published as *Partners in Development* (New York: Praeger, 1969).

20. Munro and Inglis, *Mike: The Memoirs of the Right Honourable Lester B. Pearson*, p. 31. Regardless, Canada did not completely turn its back on these countries. In fact, the Canadian foreign aid program is one of the oldest in the developed world, dating back to 1950 and the Colombo Plan. Initially, aid was concentrated on Commonwealth members in Southeast Asia but it was not long before political and security issues dominated development assistance decisions. Even Pearson began to doubt the motives behind the Canadian aid program. In regards to the Colombo Plan he questioned in his memoirs whether "we should ask ourselves from time to time whether we would be doing what we are if the political and military menace of Soviet and Chinese communism did not exist." At the same time, however, it was also clear that even in these early stages Canada placed a greater emphasis on political and economic considerations than on alleviating poverty in the international system. Ottawa's reaction to the first UN Conference on Trade And Development (UNCTAD), for example, was hardly supportive in terms of aid or trade. Not only did the federal government reject the recommendation that 1 per cent of Canada's national income be used for development assistance but it also refused to remove tariffs on a number of exports from Third World states.

21. Tucker, *Canadian Foreign Policy: Contemporary Issues and Themes*, p. 7.

22. Webb, "Canada and the International Monetary Regime," p. 162.

23. Ibid., p. 164.

24. Canada, Department of External Affairs, *Foreign Policy for Canadians* (Ottawa: Information Canada, 1970).

25. Mitchell Sharp, "Reflections on Foreign Policy During the Trudeau Years," *International Perspectives*, (November/December, 1986), p. 3.

26. J.L Granatstein and Robert Bothwell, *Pirouette: Pierre Trudeau and Canadian Foreign Policy* (Toronto: University of Toronto Press, 1990), p. 332.

27. Claire Cutler and Mark Zacher, "Introduction," in Cutler and Zacher, eds. *Canadian Foreign Policy and International Economic Regimes*, p. 4.

28. Jock A. Finlayson with Stefano Bertasi, "Evolution of Canadian Postwar International Trade Policy," in Cutler and Zacher, eds. *Canadian Foreign Policy and International Economic Regimes*, pp. 19-46.

29. Christopher Thomas, "Reflections on the Canada-U.S. Free Trade Agreement in the Context of the Multilateral Trading System," in Cutler and Zacher, eds. *Canadian Foreign Policy and International Economic Regimes*, pp. 47-61.
30. Theodore H. Cohn, "Canada and the Ongoing Impasse over Agricultural Protectionism," in Cutler and Zacher, eds. *Canadian Foreign Policy and International Economic Regimes*, pp. 62-88. Despite the "internal" focus of his analysis Cohn does acknowledge that agricultural sectoral interests are also influenced by developments at the international level. In comparison to other sectors agriculture is even more sensitive as it is an area of concurrent jurisdiction. Therefore, collaboration between Ottawa and the provinces is essential in order to ensure that the federal government is able to maintain its commitments to multilateral regimes such as the NAFTA. For more information on the influence of international economic regimes on the Canadian agricultural sector, please see Grace Skogstad *The Politics of Agriculture in Canada* (Toronto: University of Toronto Press, 1987) and Grace Skogstad and Andrew Fenton Cooper, eds. *Agricultural Trade: Domestic Pressures and International Tensions* (Halifax: The Institute for Research on Public Policy, 1990).
31. David B. Dewitt and John J. Kirton, *Canada as a Principal Power: A Study in Foreign Policy and International Relations* (Toronto: John Wiley and Sons, 1983), p. 28.
32. Dewitt and Kirton cite several examples of relevant sources from this period. These include the, Royal Commission on Canada's Economic Prospects, *Final Report* (Ottawa: Queen's Printer, 1957), Irving Brecher, "Canada-U.S. Economic Relations," *International Perspectives* (November/December, 1975), pp. 29-37, Walter Gordon, *Troubled Canada: The Need for New Domestic Policies* (Toronto: McClelland and Stewart, 1961), and George Grant, *Lament for a Nation: The Defeat of Canadian Nationalism* (Toronto: McClelland and Stewart, 1965).
33. Dewitt and Kirton, *Canada as a Principal Power*, p. 30.
34. Ibid., p. 32.
35. Stephen Clarkson, "Disjunctions: Free Trade and the Paradox of Canadian Development," in Daniel Drache and Meric S. Gertler, eds., *The New Era of Global Competition: State Policy and Market Power* (Montreal and Kingston: McGill-Queen's University Press, 1991), pp. 103-126.
36. Ibid., p. 110.
37. Ibid., pp. 121-122.
38. Cutler and Zacher, "Introduction," p. 3.
39. Frank Stone, *Canada, the GATT and the International Trade System*, 2nd ed. (Montreal: Institute for Research on Public Policy, 1992), Michael M. Hart, *Trade - Why Bother?* (Ottawa: Carleton University Centre for Trade Policy and Law, 1992), Michael M. Hart, *Canadian Economic Development and the International Trading System: Constraints and Opportunities* (Toronto: University of Toronto Press, 1985), and Michael M. Hart, *A North American Free Trade Agreement* (Ottawa: Centre for Trade Policy and Law - The Institute for Research on Public Policy, 1990).
40. Stone, *Canada, the GATT and the International Trade System*, p. 1.
41. Keating, *Canada and World Order: The Multilateralist Tradition in Canadian Foreign Policy.*
42. Ibid., p. 10.
43. Ibid., p. 23.
44. Maureen Appel Molot, "Where Do We, Should We, or Can We Sit? A Review of Canadian Foreign Policy Literature," *International Journal of Canadian Studies*, 1-2 (1990), p. 78, as cited in David R. Black and Heather A. Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," *Canadian Journal of Political Science* (December, 1993), p. 745.
45. Black and Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," p. 746.
46. Ibid.

47. Ibid.
48. Kim Nossal, "Analyzing the Domestic Sources of Canadian Foreign Policy," *International Journal*, 39 (1983-1984), pp. 1-22, as cited in Black and Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," p. 749.
49. Cranford Pratt, "Dominant Class Theory and Canadian Foreign Policy: The Case of the Counter-Consensus," *International Journal*, 39 (1983-1984), pp. 99-135, as cited in Black and Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," p. 748.
50. Dewitt and Kirton, *Canada as a Principal Power* as cited in Black and Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," pp. 756-57.
51. For a sample of John Holmes's work, please see John W. Holmes, *Canada: A Middle-Aged Power* (Toronto: McClelland and Stewart, 1976), John W. Holmes, "Canada's Role in International Organizations," *The Canadian Banker*, 74 (1967), and John W. Holmes, *The Shaping of Peace: Canada and the Search for World Order, 1943-1957*, 2 vols. (Toronto: University of Toronto Press, 1979). For further information on Bernard Wood, please see Bernard Wood, *The Middle Powers and the General Interest* (Ottawa: North-South Institute, 1988) and Bernard Wood, "Towards North-South Middle-Power Coalitions," in Cranford Pratt, ed., *Middle Power Internationalism* (Montreal: McGill-Queen's University Press, 1990), pp. 69-107. For more information on Pratt's perceived role for middle powers, please see Pratt, ed., *Middle Power Internationalism*, as cited in Black and Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," pp. 762-64.
52. Black and Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," p. 771.
53. Ibid.
54. Cutler and Zacher, eds., *Canadian Foreign Policy and International Economic Regimes*.
55. Black and Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," p. 772.
56. Andrew F. Cooper, Richard A. Higgott, and Kim Richard Nossal, *Relocating Middle Powers: Australia and Canada in a Changing World Order* (Vancouver: University of British Columbia Press, 1993).
57. Cooper, Higgott, and Nossal, *Relocating Middle Powers*, p. 6.
58. Ibid., p. 7.
59. Ibid., p. 9. Cooper, Higgott and Nossal also cite Alexander Wendt, "Anarchy is What States Make of It," *International Organization*, 46 (Spring, 1992), pp. 391-425.
60. See for example Robert Cox, "Global Restructuring: Making Sense of the Changing International Political Economy," in Richard Stubbs and Geoffrey R.D. Underhill, eds., *Political Economy and the Changing Global Order* (Toronto: McClelland and Stewart Inc., 1994), pp. 45-59. Other relevant contributions include, Robert Cox, "Production, The State, and Change in World Order," in Ernst-Otto Czempiel and James N. Rosenau, eds., *Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990's* (Toronto: Maxwell Macmillan Canada, 1989), pp. 37-50, and Robert Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," in Robert Keohane, ed., *Neorealism and Its Critics* (New York: Columbia University Press, 1986), pp. 204-254.
61. Black and Smith, "Notable Exceptions? New and Arrested Directions in Canadian Foreign Policy Literature," p. 770.
62. Ibid.
63. Douglas M. Brown, Earl H. Fry, and James Groen, "States and Provinces in the International Economy Project," in Douglas M. Brown and Earl H. Fry, eds., *States and Provinces in the International Economy* (San Francisco, California and Kingston, Ontario: Institute of Governmental Studies Press, University of California, Berkeley and Institute of

Intergovernmental Relations, Queen's University, 1993), pp. 1-22. For other examples of this approach, please see Douglas M. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," in Douglas M. Brown and Murray G. Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* (Kingston, Ontario: Queen's University Institute of Intergovernmental Relations, 1991), pp. 81-128, and Douglas M. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," in Brown and Fry, eds., *States and Provinces in the International Economy*, pp. 145-166.

64. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," p. 81.

65. Kim Richard Nossal, "The Impact of Provincial Governments on Canadian Foreign Policy," in Brown and Fry, eds., *States and Provinces in the International Economy*, pp. 233-244.

66. Ibid., p. 241.

67. Brian Hocking, "Introduction," in Brian Hocking, ed., *Foreign Relations and Federal States* (New York: Leicester University Press, 1993), pp. 3-8.

68. Denis Stairs, "Will and Circumstance and the Postwar Study of Canada's Foreign Policy," *International Journal*, 50 (Winter 1994-95), pp. 9-39.

69. For more information on "province-building" and/or other aspects of fiscal federalism, please see E.R. Black and A.C. Cairns, "A Different Perspective on Canadian Federalism," *Canadian Public Administration*, 10 (1966), pp. 27-44, Paul A.R. Hobson, "Current Issues in Federal-Provincial Fiscal Relations," in Watts and Brown, eds., *Canada, The State of the Federation* (Kingston, Ontario: Queen's University, Institute of Intergovernmental Relations, 1993), pp. 175-192, and Paul Barker, "The Development of Major Shared-Cost Programs in Canada," in R.D. Olling and M.W. Westmacott, eds., *Perspectives on Canadian Federalism* (Scarborough, Ontario: Prentice-Hall Canada, 1988), pp. 195-220. Other relevant sources dealing with health care and other social issues related to fiscal federalism are cited in note 33.

70. Garth Stevenson, "The Social and Economic Background of Canadian Federalism," in Garth Stevenson, ed., *Federalism in Canada: Selected Readings* (Toronto: McClelland and Stewart, 1989), pp. 185-191, Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, 3rd ed. (Toronto: Gage Educational Publishing Company, 1989)., and Thomas J. Courchene, "Forever Amber," in David E. Smith, Peter MacKinnon, and John C. Courtney, eds., *After Meech Lake: Lessons for the Future* (Saskatoon: Fifth House Publishers, 1991), pp. 33-60.

71. Robert M. Campbell, "Federalism and Economic Policy," in Francois Rocher and Miriam Smith eds., *New Trends in Canadian Federalism* (Peterborough, Ontario: Broadview Press, 1994), pp. 187-210, and Francois Rocher and Richard Nimijean, "Global Economic Restructuring and the Evolution of Canadian Federalism and Constitutionalism," in Rocher and Smith eds., *New Trends in Canadian Federalism*, pp. 211-233.

72. For more information on more recent changes involving the CHST, please see Phillips, "The Canada Health and Social Transfer: Fiscal Federalism in Search of a Vision." in Douglas M. Brown and Jonathan W. Rose, eds., *Canada: The State of the Federation 1995* (Queen's University, Kingston, Ontario: Institute of Intergovernmental Relations, 1995), pp. 65-96.

73. Ian Robinson, "Trade Policy, Globalization, and the Future of Canadian Federalism," in Rocher and Smith eds., *New Trends in Canadian Federalism*, pp. 234-269.

74. Thomas Courchene, "Global Competitiveness and the Canadian Federation," in Thomas Courchene, ed., *Rearrangements: The Courchene Papers* (Oakville, Ontario: Mosaic Press, 1992), pp. 110-146.

75. Daniel Drache and Meric S. Gertler, "The World Economy and the Nation-State: The New International Order," in Drache and Gertler, eds., *The New Era of Global Competition*, pp. 3-25.

76. Jeanne Kirk Laux, "Shaping or Serving Markets? Public Ownership after Privatization," in Drache and Gertler, eds., *The New Era of Global Competition*, pp. 288-315.

77. Contemporary realist theory continues to be influenced by the sixteenth century writings of Thomas Hobbes. Hobbes was an English philosopher who categorized human nature as a struggle of individual wills in a battle for survival. For Hobbes the key to understanding the relationship between humankind and the state was the competitive nature of humankind, the anarchy arising from this competition, and the inevitable distrust and quest for glory that accompanied these relationships. Without the control of an absolute sovereign Hobbes perceived humankind as being in a constant state of war and, ultimately, an instrument of its own destruction. Hobbes saw no possibility of progress in this state of nature, no arts, no society, and "worst of all, continual fear, and danger of violent death; and the life of man solitary, poor, nasty, brutish and short." For more information on the Hobbesian perspective, please see Thomas Hobbes, *Leviathan, Chapter 13* (New York: Penguin Books, 1983). For a general review of contemporary realist approaches, please see Kal J. Holsti, *The Dividing Discipline, Hegemony and Diversity in International Theory* (Boston: Allen & Unwin, 1985).

78. Liberal theoretical approaches also have a long historical legacy. In the nineteenth century John Stuart Mill, inspired by Hobbes's grim vision of life in anarchical conditions, suggested that the only way humankind could survive was to surrender individual autonomy to government. In doing so Mill believed that the sacrifice of personal freedom was essential if society was to remain free. John Locke also developed his own theory of civil government in which the power of government was to be mediated by differentiating between what was "private" and what was "public." To Locke the creation of a "private" sphere consisting of individuals and associations in civil society, which was separate from the "public" sphere of the state, was central for both personal liberty and the long term stability and legitimacy of government. As such the underlying assumption of Locke's liberalism is the intrinsic value of individuals as the primary actors in the international system. Liberalism, in stark contrast to Hobbes and Mill, is thus permeated with a concern for enhancing the freedom and welfare of individuals; proposing that humankind can employ reason better to develop a sense of harmony of interest among individuals and groups within the wider community, domestic or international. For more information on the historical roots of liberalism, please see J.S. Mill, *An Essay on Liberty* (Harmondsworth: Penguin, 1969), John Locke, *Two Treatises on Government*, edited by Peter Laslett (Cambridge: Cambridge University Press, 1965), and Geoffrey R.D. Underhill, "Introduction: Conceptualizing the Changing Global Order," in Stubbs and Underhill, eds., *Political Economy and the Changing Global Order.*

79. Underhill, "Introduction: Conceptualizing the Changing Global Order," p. 20.

80. Ibid.

81. Ibid.

82. Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 5th ed. (New York: Alfred A. Knopf, 1978) and Edward H. Carr, *The Twenty Years Crisis, 1919-1939: An Introduction to the Study of International Relations* (London: Macmillan, 1939).

83. Mark W. Zacher and Richard A. Mathew, *Liberal International Theory: Common Threads, Divergent Strands* Paper Presented to the Annual Meeting of the American Political Science Association, Chicago, September 3-6, 1992, p. 44. For more information on early integration theory, please see David Mitrany, *A Working Peace System* (Chicago: Quadrangle, 1966).

84. Ibid., p. 42.

85. Charles C. Pentland, "Integration, Interdependence, and Institutions: Approaches to International Order," in Haglund and Hawes, eds., *World Politics: Power, Interdependence and Dependence*, p. 181.

86. George T. Crane and Abla Amawi, "Introduction: Theories of International Political Economy," in George T. Crane and Abla Amawi, eds., *The Theoretical Evolution of International Political Economy* (New York: Oxford University Press, 1991), p. 3.
87. Ibid., p. 4.
88. Ibid.
89. Structural realists such as Kenneth Waltz were interested in the apparent stability of the Cold War and the success of the superpowers in containing what many saw as an inevitable nuclear conflict. Waltz, however, did not believe that "traditional" realism adequately explained the complexity of the relationship between the United States and the Soviet Union. Waltz's response was to rework traditional realism focusing on the systemic level of analysis. Waltz's neo-realist or structural realist theory of international relations emphasized the importance of the anarchic structure of the international system as a determinant of behaviour or outcome in international politics. Waltz, in an attempt to create a truly parsimonious theory of international relations gave explanatory weight to the nature of the system, the number of actors, and the distribution of their capabilities. Although Waltz did acknowledge the "reductionist" nature of his approach he defended it as a necessary step in the development of a positivist theoretical model of international relations. Waltz ultimately concluded that bipolarity, as opposed to multipolarity, was a more manageable approach to peace. Waltz also attempted to downplay transnational linkages as unit level phenomena and argued that cooperation and institutionalization existed because the superpowers sought forums for peaceful resolutions to perceived global, regional, and national problems in order to maintain the status quo. Following the collapse of the Soviet Union Waltz argued that the international system was undergoing a peaceful transformation from bipolarity to multipolarity. Although this argument was based on the fact that the threat of nuclear weapons continued to maintain peace it was not consistent with Waltz's earlier comments on the primacy of the anarchic structure of the international system. Nuclear weapons were in fact a unit level capability, something Waltz previously argued was irrelevant. Further, any "fear" of a nuclear threat also implied that states or unit level actors were capable of knowledge and/or the ability to alter relations in the international system considering variables other than anarchy and the distribution of power. For more information please see Kenneth N. Waltz, *Theory of International Politics* (Reading: Addison-Wesley, 1979), Richard Ned Lebow, "The Long Peace, the End of the Cold War, and the Failure of Realism," *International Organization*, 48 (Spring, 1994), pp. 253-55, Larry Swatuk, *Between Choice in a Hard Place: Contending Theories of International Relations* (Halifax, Nova Scotia: Dalhousie University Centre for Foreign Policy Studies, 1991), p. 119, and Kenneth N. Waltz, "The Emerging Structure of International Politics," *International Security*, 18 (Fall, 1993), pp. 44-79.
90. For more information on early interdependence theory, please see Raymond Aron, *Peace and War: A Theory of International Relations* Translated by Richard Howard and Annette Baker Fox, (New York: Doubleday and Company, 1966) and Richard Cooper, "National Economic Policy in an Interdependent World," in Crane and Amawi, eds., *The Theoretical Evolution of International Political Economy*, pp. 110-121.
91. Robert O. Keohane and Joseph Nye, "Introduction," in Robert O. Keohane and Joseph Nye, eds., *Transnational Relations and World Politics* (Cambridge: Harvard University Press, 1971), p. vii.
92. Swatuk, *Between Choice in a Hard Place: Contending Theories of International Relations*, p. 63.
93. Keohane and Nye, *Transnational Relations and World Politics*, p. 374.
94. Ibid., p. 375.
95. Ibid., p. 379.
96. Swatuk, *Between Choice in a Hard Place: Contending Theories of International Relations*, p. 64.
97. Robert O. Keohane and Joseph S. Nye. "Transnational Relations and World Politics." in Robert O. Mathews, Arthur G. Rubinoff, and Janice Gross Stein, eds.,

International Conflict and Conflict Management: Readings in World Politics, 2nd ed. (Scarborough, Ontario: Prentice-Hall Canada Inc., 1989), p. 311.

98. Ibid., p. 312.

99. Pentland, "Integration, Interdependence, and Institutions: Approaches to International Order," p. 185.

100. Ibid.

101. For more information on functionalism and confederal systems of government, please see Pentland, p. 185.

102. Ibid.

103. Richard Leaver, "International Political Economy and the Changing World Order: Evolution or Involution?" in Stubbs and Underhill, eds., *Political Economy and the Changing Global Order*, p. 132.

104. Stephen Krasner has defined regimes as, "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations, converge in a given arena of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice." Taken from, Stephen D. Krasner, "Introduction," in Stephen Krasner, ed., *International Regimes* (Ithaca: Cornell University Press, 1983), p. 2.

105. Leaver, "International Political Economy and the Changing World Order: Evolution or Involution?" p. 132. See also Stephen D. Krasner, *Defending the National Interest: Raw Materials Investments and U.S. Foreign Policy* (Princeton, New Jersey: Princeton University Press, 1978), Stephen D. Krasner, "State Power and the Structure of International Trade," *World Politics*, 28 (April, 1976), pp. 317-347, and Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," *International Organization*, 36 (Spring, 1982), pp. 185-206.

106. Robert Gilpin, "The Politics of Transnational Economic Relations," in Keohane and Nye, eds., *Transnational Relations and World Politics*, pp. 48-69, see also George T. Crane and Abla Amawi, "The Return to Statist Theories in International Political Economy," in Crane and Amawi, eds., *The Theoretical Evolution of International Political Economy*, pp. 167-169.

107. Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, New Jersey: Princeton University Press, 1984), see also James Keeley, "The Latest Wave: A Critical Review of Regime Literature," in Haglund and Hawes, eds., *World Politics: Power, Interdependence and Dependence*.

108. Keeley, "The Latest Wave: A Critical Review of Regime Literature," p. 559.

109. Joseph M. Grieco and John J. Mearsheimer are the most vocal critics of the liberal institutionalist approach. For more information please see Joseph M. Grieco, "Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism," *International Organization*, 42 (Summer, 1988), pp. 485-508, John J. Mearsheimer, "The False Promise of International Institutions," *International Security*, 19, (Winter, 1994-95), pp. 5-49, and Duncan Snidal, "Relative Gains and the Pattern of International Cooperation," *American Political Science Review*, 85 (September 1991), pp. 701-726. Several articles discussing these issues are also available in David A. Baldwin, ed., *Neorealism and Neoliberalism: The Contemporary Debate* (New York: Columbia University Press, 1993). For a discussion of this perspective linked directly to the GATT, please see Joseph M. Grieco, *Cooperation Among Nations: Europe, America and Non-Tariff Barriers* (Ithaca: Cornell University Press, 1990).

110. Leaver, "International Political Economy and the Changing World Order: Evolution or Involution?" p. 133.

111. Pentland, "Integration, Interdependence, and Institutions: Approaches to International Order," p. 91.

112. Ibid.

113. Keeley, "The Latest Wave: A Critical Review of Regime Literature," p. 563.
114. A. Claire Cutler and Mark W. Zacher, "Introduction," in Cutler and Zacher eds., *Canadian Foreign Policy and International Economic Regimes*, p. 3.
115. Mark W. Zacher, "The Decaying Pillars of the Westphalian Temple: Implications for International Order and Governance," in James N. Rosenau and Ernst-Otto Czempiel, eds., *Governance Without Government: Order and Change in World Politics* (New York: Cambridge University Press, 1992), p. 64.
116. Ibid.
117. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," p. 193.
118. Ibid.
119. Oran R. Young, "The Effectiveness of International Institutions: Hard Cases and Critical Variables," in Rosenau and Czempiel, eds., *Governance Without Government: Order and Change in World Politics*, p. 175.
120. Richard Higgott, "Toward a Nonhegemonic IPE: An Antipodean Perspective," in Craig Murphy and Roger Tooze, eds., *New International Political Economy* (Boulder, Colorado: Lynne Rienner, 1991), p. 106.
121. Ibid. Barry Buzan has also critiqued the American dominance of regime theory and hegemony and argues that structural realism and regime theory are related to the concepts of "international society" embodied in the largely historical works of British political theory. Buzan suggests that the idea of an international society of states dates back to the seventeenth century and Hugo Grotius. Grotius saw international society as being rooted in the classical legal tradition and the notion that international law constitutes a community of those participating in the international legal order. Although a number of English writers developed these concepts including E.H. Carr and Martin Wight, the most prominent of was Hedley Bull. Some believe Bull created a "bridge" between traditional realism and liberal theories of cooperation as he offered an explanatory framework that recognized the potential for cooperation and rules-based institutions in a system dominated by anarchy and the nation-state. On the surface it appears that Bull gives equality to the state and his international "society." There is a contradiction in Bull's analysis, however, in that he recognizes the likelihood that states will violate the rules and norms of this "society" but fails to explain how these violations will contribute to the development of cooperation in the international system. Bull also suggests that cooperative institutional arrangements could only exist as long as states continued to recognize their legitimacy. If Bull's "society of states" ever threatened the supremacy of territorial actors in the international system it was his belief it would mark the end of institutionalized cooperation. For more information on the work the "English school", please see Barry Buzan, "From International System to International Society: Structural Realism and Regime Theory Meet the English School," *International Organization*, 47 (Summer, 1993), pp. 327-352, Martin Wight, "Western Values in International Relations," in Herbert Butterfield and Martin Wight, eds., *Diplomatic Investigations* (London: Allen and Unwin, 1966), pp. 89-131, Martin Wight, *Systems of States* Leicester: Leicester University Press, 1977), Martin Wight, *Power Politics* (Harmonsworth, England: Penguin, 1979), pp. 105-112, Gabrielle Wright and Brian Porter, eds., *International Theory: The Three Traditions - Martin Wight* (Leicester: Leicester University Press, 1991), Hedley Bull, *The Anarchical Society* (London: Macmillan, 1977), Hedley Bull, *Justice in International Relations*, 1983-84 Hagey Lectures, University of Waterloo, 1984, Hedley Bull and Adam Watson, eds., *The Standard of "Civilization" in International Society* (Oxford: Clarendon Press, 1984), Adam Watson, "Hedley Bull, State Systems, and International Studies," *Review of International Studies*, 13 (April 1987), pp. 147-53, Adam Watson, "Systems of States," *Review of International Studies*, 16 (April 1990), pp. 99-109, Adam Watson, *The Evolution of International Society* (London: Routledge, 1992), John R. Vincent, *Non-Intervention and International Order* (Princeton, New Jersey: Princeton University Press, 1974), and John

R. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986).

122. Susan Strange, "Cave! Hic Dragones: A Critique of Regime Analysis," *International Organization*, 36 (Spring, 1982), p. 494.

123. For a detailed critique of the "conceptual wooliness" of regime theory, please see Strange, "Cave! Hic Dragones: A Critique of Regime Analysis."

124. Underhill, "Introduction: Conceptualizing the Changing Global Order," p. 28.

125. Ibid.

126. Ibid., p. 30.

127. Richard Stubbs and Geoffrey R.D. Underhill, "Introduction: Global Issues in Historical Perspective," in Stubbs and Underhill, eds., *Political Economy and the Changing Global Order*, p. 147.

128. The structural relevance of anarchy in international relations theory has also been challenged by "critical" theoretical perspectives including post-modernists, constructivists, neo-marxists, and gender related approaches. Unlike realism, critical theory accepts that the fundamental structures of international politics are social rather than strictly material and that these structures shape actors identities and interests rather than just their behaviour. Alexander Wendt, for example, has suggested that social structures consist of three elements. The first is knowledge, which is primarily shared understandings and expectations, and the second is material resources, not unlike those discussed by balance of power realists. The third and final social structure exists not in the minds of individuals or in material capabilities but in the practice of the particular actors involved. John Gerard Ruggie has also questioned the realist predominance with power and its inability to adequately address issues of change. In terms of power relationships Ruggie argues that there are multiple power centers within the international community and that power should be conceived not in the physicalist sense of possessed capabilities, but as the possession of a perceived right to take action in global affairs. Although realist conceptions of power may explain the existence of order in the international community it does little to explain the content of interaction that takes place within the system. In other words, if one wants to say anything sensible about the content of the international economic orders and about the regimes that serve them, it is necessary to look at how power and legitimate social purpose become fused to project political authority into the international system. Ruggie has also suggested that a more nuanced formulation of change is necessary to fully understand the reality of the contemporary international system. Specifically, Ruggie argues that as long as the important social aspects of a given regime remain constant the decline of a hegemon may not mark the demise of specific cooperative arrangements. If this is the case one would expect to find changes in the rules and procedures but not in the principles and norms of specific regimes. Ruggie's analysis of money and trade regimes in the post-war period, in which he introduces the concept of "embedded liberalism," tend to validate this assertion. For more information please see Alexander Wendt, "Constructing International Politics," *International Security*, 20 (Summer, 1995), John Gerard Ruggie, "Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis," in Robert Keohane, ed., *Neorealism and its Critics* (New York: Columbia University Press, 1986), pp. 131-157, Alexander Wendt and Raymond Duvall, "Institutions and International Order." in Czempiel and Rosenau, eds., *Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990's*, pp. 51-74, and John Gerard Ruggie, "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order," *International Organization*, 36 (Spring, 1982), pp. 379-416.

129. Underhill, "Introduction: Conceptualizing the Changing Global Order," p. 31.

130. Ibid.

131. There have been several attempts to address the level of analysis problem in IR theory. A particular branch of liberal interdependence theory that emerged in the mid-1980s , known as the "second-image reversed" approach, was articulated by scholars such as Peter Gourevitch and Peter Katzenstein. Both suggested there was a reciprocal

relationship between domestic politics and developments in the international system. Robert Putnam also attempted to incorporate domestic actors in a theory he referred to as the study of "two-level games." In this approach, which is essentially a theory of international bargaining, it was generally assumed that statesman try to manipulate both domestic and international politics at the same time. On the surface these contributions suggest that great strides are taking place in overcoming the realist bias of IPE. At first glance it appears that steps have been taken to address the separation of politics and markets, the centrality of the state as a unitary rational actor, and the importance of domestic actors. In reality, however, these efforts fail to address a number of important issues. The "second-image reversed" approach, for example, is ultimately nothing more than a state-centric analysis of domestic "interests" in areas of foreign policy. Gourevitch, despite recognizing the internal impact of bureaucracy, the perceptual set of leaders, and the importance of transnational actors, eventually relies on a "strong state" (limited domestic influence) versus "weak state" (strong domestic influence) to explain the importance of domestic and international linkages. Katzenstein also focuses on domestic interests and the formal institutional mechanisms of the state. Furthermore, in accepting the need for statesman to consider domestic interests during international negotiations Putnam is essentially focusing on domestic "win-sets" and the opportunities and constraints these impose on international negotiators. As some critics suggest this simply restates a commonly made argument that state preferences in international bargaining are not wholly determined by the situation at the system level because they also reflect unit-level factors. For more information please see Peter Gourevitch, "The Second Image Reversed: The International Sources of Domestic Politics," *International Organization*, 32 (Autumn, 1978), pp. 881-913, Peter Gourevitch, *Politics in Hard Times: Comparative Responses to International Economic Crises* (Ithaca, New York: Cornell University Press, 1986), Peter J. Katzenstein, ed., *Between Power and Plenty: Foreign Economic Policies of Advanced Industrial States* (Madison Wisconsin: The University of Wisconsin Press, 1978), Peter Katzenstein, *Small and World Markets: Industrial Policy in Europe* (Ithaca, New York: Cornell University Press, 1985), Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization*, 42 (Summer, 1988), pp. 427-460, Andrew Moravcsik, "Introduction: Integrating International and Domestic Theories of International Bargaining," in Peter B. Evans, Harold K. Jacobson and Robert D. Putnam, eds., *Double-Edged Diplomacy: International Bargaining and Domestic Politics* (Los Angeles: University of California Press, 1993), pp. 3-42, and Jeffrey W. Knopf, "Beyond Two-Level Games: Domestic-International Interaction in the Intermediate-Range Nuclear Forces Negotiations," *International Organization*, 47 (Autumn, 1993), pp. 599-628. Knopf also cites Joanne Gowa, "Anarchy, Egoism, and Third Images: the Volution of Cooperation and International Relations," *International Organization*, 40 (Winter, 1986), pp. 167-186 as another contribution recognizing the importance of "win-sets" at the domestic level. For a review of the bureaucratic politics model, please see Graham Allison, *Essence of Decision* (Boston: Little, Brown, 1971).

132. Editorial, "Forum for Heterodox International Political Economy," *Review of International Political Economy*, 1 (Spring 1994), p. 9.
133. Underhill, "Introduction: Conceptualizing the Changing Global Order," p. 33.
134. Ibid., p. 35.
135. Underhill suggests that this point is argued convincingly by Claudio Napoleoni in *Smith, Ricardo, Marx: Observations on the History of Economic Thought* (Oxford: Basil Blackwell, 1975).
136. Underhill, "Introduction: Conceptualizing the Changing Global Order," p. 35.
137. Ibid.
138. Ibid., p. 37.
139. Gourevitch, "The Second Image Reversed," p. 904.
140. Underhill, "Introduction: Conceptualizing the Changing Global Order," p. 38.
141. Ibid.

142. Keohane and Nye, *Power and Interdependence: World Politics in Transition*, p. 263.

143. Robert W. Cox, "Global Restructuring: Making Sense of the Changing International Political Economy," in Stubbs and Underhill, eds. *Political Economy and the Changing Global Order*, p. 52. Cox, and authors such as Stephen Gill, build on the work of Antonio Gramsci, Karl Polanyi and Fernand Braudel, in an attempt to avoid the economic reductionism associated with class-based approaches of international political economy. According to Cox, "change" in the international system is a result of "historical" structures. These structures are social constructs based on innumerable often-repeated actions, discoverable through common expectations of behaviour which provide a framework for actions. Cox labels these structures as the organization of production, the form of the state, and the structure of world order. All of these contribute to the development of more encompassing historical structures that are essential constructs for understanding change at the international level. For more information please see Robert W. Cox, "Production, The State, and Change in World Order," in Czempiel and Rosenau, eds., *Global Changes and Theoretical Challenges: Approaches to World Politics for the 1990's*, pp. 37-50, Philip G. Cerny, *The Changing Architecture of Politics: Structure, Agency, and the Future of the State* (London: Sage, 1990), Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1944), Stephen Gill, ed., *Gramsci, Historical Materialism, and International Relations* (Cambridge: Cambridge University Press, 1993), Fernand Braudel, *Capitalism and Material Life* (London: Weidenfield and Nicolson, 1973), and Fernand Braudel, *The Wheels of Commerce* (London: Collins, 1982). Underhill also suggests that the concept of *economic* structure employed by Marxists and other political economy approaches (mode of production/historical structure as a social whole, etc.) should not be confused with the conception of *political* structure (anarchy etc.) employed by neo-realists. Waltz and others see structures as patterns of relationships. Others, such as Ruggie and Cox, perceive structure as a more holistic concept, including the totality of social, economic, and political relationships and processes in particular historical circumstances. Underhill also cites Stephen Gill, *American Hegemony and the Trilateral Commission* (New York: Cambridge University Press, 1990), and Stephen Gill and David Law, *The Political Global Economy* (Baltimore: Johns Hopkins University Press, 1988), ch. 5, as a discussion of a "radical" approach to international political economy.

144. Rosenau cites the term "post-international politics" in James N. Rosenau, "Global Changes and Theoretical Challenges: Toward a Postinternational Politics for the 1990's," in Czempiel and Rosenau, eds., *Global Changes and Theoretical Challenges*, pp. 2-3. Rosenau also makes it clear that governance is not simply another variation of regime theory. He suggests that these institutions are "issue-oriented" whereas governance is a much more encompassing concept that it is not confined to a specific sphere of international relations. For more information on Rosenau's theory of "governance without government", please see James N. Rosenau, "Governance, Order, and Change in World Politics," in Rosenau and Czempiel, eds., *Governance Without Government: Order and Change in World Politics*, pp. 1-30, James N. Rosenau and Ernst-Otto Czempiel, "Preface," in Rosenau and Czempiel, eds., *Governance Without Government: Order and Change in World Politics*, pp. xi-xii, Ernst-Otto Czempiel, "Governance and Democratization," in Rosenau and Czempiel, eds., *Governance Without Government: Order and Change in World Politics*, pp. 250-271, and James N. Rosenau, "Citizenship in a Changing Global Order," in Rosenau and Czempiel, eds., *Governance Without Government: Order and Change in World Politics*, pp. 272-294.

145. Rosenau, "Governance, Order, and Change in World Politics," pp. 13-14.

146. Ibid., p. 1.

CHAPTER 2

The Economic Decentralization of Canadian Federalism

Introduction

In order to better understand the impact of the North American Free Trade Agreement it is essential to examine its influence on domestic political and economic relationships in Canada. It is also necessary to explore the environment in which these relationships take place, namely Canadian federalism. The activity of both governmental and non-governmental actors are inexorably linked, at least in some capacity, to the federal structure of government in Canada. Therefore, it is important not only to define federalism but also to understand the forces that both limit and enhance the capacity of federal and provincial governments to pursue independent policy initiatives. It is also helpful to distinguish between the societal and economic dimensions of Canadian federalism and to determine whether or not Ottawa has the necessary means in which to facilitate federal control of intergovernmental relations. The reality of Canadian federalism is such that Ottawa has only a limited number of brokerage mechanisms available to manage the economic activity of the provinces. Provincial governments also have legitimate constitutional right to the various natural resource and sectoral interests that are central to the North American Free Trade Agreement. In pursuing these legitimate objectives, however, the provinces place further pressure on a domestic economy already fragmented by federal-provincial fiscal policy, conflicting regional development strategies, varying provincial claims to indigenous natural resources, and a series of complex interprovincial trade barriers. These issues not

only have the potential to alter the constitutional evolution of Canadian federalism but also ensure that provincial influence will continue to increase in policy areas formerly under central control, including foreign economic policy.

Defining Federalism

Issues of provincial empowerment and/or centralization and decentralization existed long before the arrival of the North American Free Trade Agreement. The following chapters will argue that the NAFTA has reinforced traditional regional cleavages in the Canadian political economy. It is, however, still relevant to examine other domestic forces that have influenced federal-provincial relations during the post-war period. Specifically, it is important to understand that many of these variables are unrelated to international economic regimes and that federal and provincial struggles over centralization and decentralization have been a central part of Canadian federalism since Confederation. One place to start is to ask why federalism was considered an appropriate form of government for Canada in the first place. According to K.C. Wheare federalism worked best if a group of states or communities, at one and the same time, desired to be united under a single independent general government for some purposes but organized under independent regional governments for others. As Wheare suggests, and these are all relevant to the early Canadian experience, the desire to be separate came from geographic size, differences in nationality, language, heritage, and religion, and/or periods of previous independence or limited sovereignty experienced by the territorial units involved. Federalism was a "method of dividing (governmental) powers so that the general and regional governments are each within a sphere co-ordinate and independent."[1] Or, put more simply, there had to be a "desire to be united, but not unitary."[2] Implied in Wheare's definition is a key characteristic of federalism, namely that "the powers of the central government are exercised directly over individual citizens and private groups rather than, as in a confederacy, through the states or provinces alone."[3]

Critics of Wheare argue that these definitional exercises tell us very little about how political systems actually operate. Garth Stevenson has suggested that "these formal criteria are so restrictive that their applicability to even those considered the most federal of states can be questioned."[4] Stevenson, for example, points out that federal legislation is not subject to judicial review in Switzerland and the government of Germany is not completely independent of the *land* governments since the *lander* control the upper house of the federal parliament. Michael Regan has also argued that the United States does not qualify as a federation under these guidelines as there is no field reserved for the states in which Congress is unable to legislate.[5] As a result, any definition of federalism must be

broad enough to include characteristics unique to states accepted as federations while not containing features that do not prevail in all examples. Donald Smiley has proposed the following working definition:

> a federation is a sovereign state in which: (1) There is a constitution which distributes the powers of government between central and regional governments and which provides some protection for the people and/or the governments of these regional units in the structure and operation of the central government; (2) The elements of the constitution related to the respective powers of the center and the regions are not subject to change by the action of the central or regional governments alone; and (3) Individual citizens and private groups are subject to the laws and authoritative exercises of power by both the central and regional governments.[6]

Smiley makes it clear, however, that his definition is stipulative rather than normative. In his words federalism is neither a "boo word" nor a "hurrah word" and that, for the most part, it is not very helpful "to evaluate any particular set of governmental arrangements by the test of whether it conforms to a particular definition of federalism or otherwise."[7] Ultimately, Smiley's goal was to introduce a "measure of clarity into [his analysis] and not to provide a normative test by which governmental systems in Canada or elsewhere are to be evaluated."[8]

There are a number of critics who question the formal-legal nature of Wheare's and Smiley's contributions.[9] Specifically, several observers suggest that these "territorial" and "institutional" characteristics ignore the relevance of societal variables that have a direct impact on the evolution of Canadian federalism. As will be argued in chapter seven below these variables are directly linked to international economic regimes in the sense that non-territorial interests have the potential to mobilize if the intrusiveness of these agreements begin to threaten their interests. These arguments indicate the relevance of the "state-society" debate within the literature on Canadian federalism. The first authors to challenge the traditional "statist" assumptions of government-society relations emerged during the 1950s and 1960s. William S. Livingston, for example, argued that Canadian federalism was a function of societies as opposed to governments.[10] Livingston "abandoned institutional criteria almost entirely and developed the concept of a 'federal society,' which he defined as any society in which economic, religious, racial, or historical diversities are territorially grouped."[11] As such, even unitary states that protected diversity through political practice or convention were considered to have some federal characteristics.[12] Michael Stein, commenting on the growing French-English focus of federal-provincial relations in Canada, also suggested that federalism "is that form of political system (of a nation-state) in which the institutions, values, attitudes, and patterns of political action

operate to give autonomous expression to both the national political system and political culture and to regional political sub-systems and subcultures (defined primarily by ethnic-linguistic factors)."[13] The "societal" approaches of authors such as Livingston and Stein were part of a larger trend within North American sociology and political science during this period. Studies focused on societal "inputs" and government "outputs" and institutions were viewed "primarily as an arena within which economic interest groups or normative social movements contended or allied with one another to shape the making of public policy decisions."[14]

The "state-society" debate continued to receive considerable attention throughout the 1970s and 1980s. Alan Cairns, who initially attacked the societal focus of authors such as Livingston and Stein, subsequently attempted to explain the interdependent nature of state and societal variables.[15] In his contribution to the *Royal Commission on the Economic Union and Development Prospects for Canada* (The Macdonald Report), for example, Cairns argued that cleavages within Canadian society required a re-evaluation of previous intellectual frameworks.[16] Cairns suggested there were a number of developments that indicated a growing "synthesis" of state and society in Canadian federalism. These included: the development of a rights-based society seeking empowerment under the Charter of Rights and Freedoms; the transformation of Quebec nationalism into an independence-based movement; feminist challenges to the gender biased division of labour; the increasing focus on ethnicity manifested in multiculturalism and aboriginal demands for self-government; a growing deficit and the "social" issues that accompanied its reduction; and the startling discrepancy between the size and weakness of the modern state. As Cairns noted, "this list, which could be extended over several pages, suggests that it would be reasonable to step back and try and find some common threads in the interdependencies, contradictions and emergent phenomena of late-twentieth-century Canada."[17]

Cairns believed that the exclusive nature of state and/or society-based approaches failed to adequately explain the complex nature of Canadian federalism. He believed that the growth of government and the cleavages of Canadian society resulted in a fragmented state with a reciprocal impact on policy. Not only were social forces pulled in multiple directions by the interaction of state structures and policy but the diversity of cleavages also penetrated the institutions of government in terms of agencies, personnel and policy. In sum, "neither state nor society [was] immune from fragmenting tendencies in the other."[18] One difficulty with this approach is its lack of clarity. On the one hand, Cairns points to the intrusive nature of society. On the other, he admits that "massive state intervention" may be the only way to deal with these concerns. His conclusions can be interpreted in two ways: either cleavages will continue to place considerable pressure on Canadian

federalism; or strong leadership and government will create a "pan-Canadian" focus by replacing old divisive cleavages of regionalism with non-territorial rights-based issues. In the end, however, it is difficult to ignore Cairns statist bias. He was, after all, talking about "the embedded state" as opposed to the "embedded society."[19]

Ultimately, if any study is to address the reality of contemporary Canadian federalism it must, in some capacity, acknowledge the inter-relationship of state and society. As one observer has noted, the study of politics must consist of "the ways in which constitutional and political institutions, and the social forces and movements in a particular society, interact with each other; of the limits upon the extent to which stable constitutional modes of behaviour can be developed and maintained; and the effects they have in moulding behaviour."[20] As with international theory, however, it would be wrong to simply reduce the complex nature of Canadian federalism to a discussion of state and societal variables.[21] Regardless, at the current time there is considerable evidence to suggest that the state maintains an important role at the domestic level, especially in terms of the economic nature of the Canadian federal arrangement. As Cairns has noted, Canadian federalism "is about governments" and to date it is not wrong to "assume that the federal and provincial governments have, under some circumstances at least, a real rather than 'relative' autonomy in shaping economy and society."[22] This is not to suggest that non-territorial variables are irrelevant in the federal-provincial relationship. Societal variables have a considerable impact on Canadian federalism and this influence is unlikely to diminish in the near future.[23] It simply means, as it does at the international level, that the "state" remains a relevant and important actor in political and economic relationships of domestic actors. In adopting this approach it also provides a starting point for understanding the impact of "intrusive interdependence" at the domestic level, especially in terms of the on-going economic decentralization of Canadian federalism.

Decentralization and Canadian Federalism

If one accepts the fact that territorialism is an essential aspect of Canadian federalism it follows that its decentralization will offer important clues to economic and political developments at the domestic level. It can also be argued that decentralization can contribute to a better understanding of the inter-relationship between international and domestic levels of analysis. Specifically, decentralization should not be linked solely to developments in Canadian federalism. The on-going empowerment of domestic actors is also directly related to the increasing prominence of "intrusive interdependence" at the international level. As definitions of federalism incorporate two-levels of government it is clear that both central and sub-national actors are conceptually part of the "state" in Canada.

At the same time, the increasing influence of sub-national governments should not be dismissed as nothing more than a normal or expected aspect of Canadian federalism. Given the territorial reality of federalism it should not be surprising that any disaggregation of the state will first manifest itself in the form of increasing power for provinces, states, or cantons. Therefore, the significance of the provinces in Canada is also related to the empowerment of other non-territorial domestic actors. As change continues to occur at both the international and domestic levels it becomes necessary to move beyond the static boundaries of "state-driven theory" and to incorporate both domestic and international non-territorial variables. In addition to challenging traditional concepts of domestic and international theory these developments also have important repercussions for both the policy process in Canada and the constitutional evolution of Canadian federalism.

In order to illustrate these developments it is helpful to examine the ongoing decentralization of Canadian federalism in terms of the "evolution" of powers included in the Constitution Act, 1867, the changing nature of fiscal federalism, and the regional reality of the domestic political economy. Although the term "province-building" was not adopted as an academic construct until 1966, when Black and Cairns drew attention to the economic strength of the provinces, previous observations of the regional dynamics of the Canadian economy were not uncommon.[24] One of the first to notice the economic power of the provinces was Harold A. Innis.[25] Innis, an economic historian, emphasized three primary aspects of the early Canadian economy including its reliance on natural resources, the difficulty involved in extracting these resources, and the subsequent dependence on external markets and capital due to the geographic realities of the Canadian state. The provinces became the regional representatives for these economic interests largely as a result of the early structure of the Canadian economy. Any form of national economic development in Canada took the form of parallel "territorial" economies based on the extraction and exploitation of regionally-based staples, such as cod, wheat, lumber, or minerals. These regional economies required political mechanisms to protect their interests and the provinces often became the official voice for these actors within Confederation.[26] As N.H. Lithwick has noted:

> This convenient mapping of discrete economic activities and their social superstructure onto spatially separable territories provided a strong rationale for province-based regionalism. Each province was relatively homogeneous in terms of economic structure and quite distinguishable from the others. So long as economic development was centered on resource exploitation, the provincial boundaries matched the basic structural and associated spatial characteristics of the economy.[27]

As a result, the early Canadian economy was in many ways no more than the sum of its parts and in "such a situation regionalism and federalism were correctly perceived to be consistent, mutually supportive forces."[28]

Innis had perhaps his greatest influence on those observers adopting a "political economy" approach to Canadian federalism. While the literature on political economy tends to focus on class-based issues, it also outlines a number of other relevant factors that contribute to the decentralization of federal-provincial relations in Canada. Support for this argument is clearly outlined in Stevenson's *Unfulfilled Union*. Stevenson's territorial conceptualization of the Canadian economy can be traced back as far as Confederation. There were examples of state intervention in the nineteenth century, notably the use of the federal tariff and the development of required infrastructure such as roads, canals, and railways. The relatively simple nature of the Canadian economy, however, was such that there was little perceived need for a detailed outline of federal-provincial economic powers in the BNA Act. The actual text of the Act suggests that although Canada was a federal state the bargain of Confederation was one that emphasized a high degree of central authority. Provincial legislation was prohibited from becoming law without consent from a federal appointee, the Lieutenant-Governor, and the federal executive had the power to disallow a provincial law within a given year.[29] Subjects unallocated in the text of the agreement and laws related to "Property and Civil Rights" were also deemed to be under central control as outlined in sections 91 and 94. Judges for provincial superior courts and the Supreme Court of Canada were federally appointed and the Supreme Court was designated as the final court of appeal for both provincial and federal laws. Furthermore, representatives in the Canadian Senate were appointed "for life" by the federal executive, as opposed to being chosen or elected on a regional basis, and provincial financial autonomy was restrained as the provinces were only given the jurisdiction to impose direct taxes.[30]

The economic considerations that were included in the BNA Act suggested a long legacy of central control. Despite the reality of regional economies the chief economic activities of the period, such as trade and commerce (which included banks, legal tender, and weights and measures), seacoast and inland fisheries, and navigation and shipping were all exclusive federal powers. Agriculture was a concurrent power, with federal laws paramount, and railways and canals were interprovincial but could be made exclusively federal at any time with a simple declaration by Parliament. The provinces were left in control of natural resources but it was generally accepted that as these products entered the "trade and commerce" of the Canadian economy they would come under federal control. Further, provincial tariffs were prohibited and customs authority was given to Ottawa. The economic goal of the federal union was to limit the autonomy that had "stifled" the financial

development of the pre-Confederation colonies. John A. Macdonald, the principal architect of Confederation confidently declared that it would not be long before "the provincial governments would become insignificant, since most powers had been given to the central government."[31] In the words of another observer, the BNA Act was a "sensible arrangement, seemingly forever free from the kind of aggravated local sovereignty which had disrupted the United States by civil war, and which served as so clear an object lesson to the men of both races who drafted the agreements at Quebec and London."[32]

As time passed, however, it was clear that Macdonald was wrong in his original interpretation of the Constitution Act, 1867, especially in terms of economic considerations. Stevenson has even suggested that the "central government in Canada [now] has less effective power to make economic policy than that of any industrialized country."[33] Stevenson bases his conclusion on the fact that the three principal elements of the contemporary Canadian economy, namely land, labour and capital, are now under provincial control. Specifically, the provinces have jurisdictional authority over natural resources, colleges and universities that train the labour force, and the regulation of industrial relations, collective bargaining, and other related matters (except in federally regulated industries). Most capital considerations are under federal control but the provinces also have the power to tax incomes and property and to regulate securities dealers, stock exchanges, credit unions and most insurance companies (but not banks). As a result, Stevenson argues that Ottawa no longer controls those powers necessary for federal goals of "nation-building", or economic nationalism (which call for the restriction and regulation of economic ties to the outside world). According to Stevenson:

> If economic nationalism and economic provincialism are pursued simultaneously by different class fractions within a federal country, conflict is almost certain to ensue. ... Canadian economic policy must therefore, be referred to in the plural, as the distinct and independent policies of several governments, pursuing different objectives, responding to different sets of interests and circumstances, and competing to control the same resources, including the intangible resources of power, influence and authority.[34]

Stevenson does concede that cooperation amongst governments is possible when shared objectives materialize, but he also stresses that collaboration is often difficult due to fundamental conflicts over economic goals.

There are a number of other economic considerations not solely related to Stevenson's class-based conclusions that also contribute to the further decentralization of Canadian federalism. The evolution of domestic fiscal policy, for example, offers a good example of some of the difficulties facing the federal government in its attempts to centralize control over Canadian economic policy. Full employment and stable inflation

rates were generally taken for granted at the turn of the century. Following the First World War it became apparent that economic conditions in Canada were undergoing a dramatic transformation. In response, Ottawa adopted an approach to fiscal policy advocated by John Maynard Keynes in an attempt to deal with the new problems of unemployment and rising inflation. For Keynes, the "solution was to regulate the amount of demand in the economy. If unemployment was high, governments should tax less and spend more, increasing the demand for goods and services and thus putting people back to work. If inflation threatened, governments should tax more and spend less, reducing the demand and thus causing prices to fall."[35] The Department of Finance was a strong supporter of Keynes following the publication of his early works in 1936. Federal regulation of the Canadian economy during the Second World War also made it easier for Ottawa to adopt a centralized approach to fiscal policy.

By 1956 the province of Quebec began to challenge Ottawa's Keynesian approach to policy. During that year the provincial Tremblay Commission recommended that both levels of government should attempt to coordinate fiscal policy in an effort to control and stabilize the national economy. Few provincial governments had the expertise or ideological predisposition to enter into a coordinated arrangement at the time of the Commission. An increasing amount of fiscal power, however, was soon transferred to the provinces, especially in matters relating to taxation, equalization payments and shared cost programs. In the case of taxation Ottawa historically had controlled a highly centralized system which allowed for a series of redistributive transfers to the provinces. These arrangements, known as tax rentals, initially took the form of tax abatements and were supplemented by equal per capita transfers. In 1957 a series of Tax Rental Agreements was negotiated which introduced a tax sharing arrangement in which the tax rental was based solely on the source of collected taxes within specific provincial borders. An equalization formula was also introduced that called for per capita revenues from tax abatements to be based on the average per capita yield of Ontario and British Columbia, thereby equalizing tax abatements on a "top-two-province" standard.

In 1962 The Federal-Provincial Fiscal Arrangements Act replaced the previous system of tax rentals and initiated a taxation program that serves as the basis of the current system. In the 1962 agreement the federal government transferred personal income taxation to the provinces which allowed them to levy taxes in these areas as they wished. Per capita revenues also continued to be equalized on the "top-two-province" system. Since that time, "the practice of transferring income tax room to the provinces has been an integral part of the evolution of federal-provincial fiscal relations."[36] Additional tax points were transferred in 1967 in lieu of previous cash transfers for post-secondary education

and in 1977 the process culminated in the establishment of Established Programs Financing (EPF) which was to provide for greater provincial accountability through the transfer of additional tax room to the provinces in lieu of health-care grants. The "top-two-province" standard of equalization was also changed in 1967 to a system based on a national average. Provinces failing to reach the average would be equalized upward but those governments exceeding the average yield would not be penalized. The significance of the new system was such that "provincial per capita income tax yields were no longer 'fully equalized' (to the average per capita value in the two wealthiest provinces); rather; while they were equalized up to the national average in those provinces with per capita yields below the national average, they were of greater value (per capita) in those provinces with above average yields."[37]

In addition to the increasing linkage between tax collection agreements and equalization programs there was an increasingly decentralized approach to federal-provincial shared cost programs. Following World War Two the federal government had used a series of conditional grants to persuade the provinces to establish shared cost programs for public health services, welfare assistance, and health care. Conditional grants involved the transfer of federal funds to the provinces on the basis of three requirements. Not only were the transferred funds to be used specifically for the program covered by the arrangement but the provinces were also forced to make specific financial contributions and adhere to program guidelines outlined by Ottawa. The federal government ensured that the first two conditions were met by basing its funding on provincial expenditures for a specific program. Specifically, this "cost-matching" feature "involved the federal government reimbursing the provinces 50 cents for every dollar they spent. As for the enforcement of the third requirement, Ottawa relied on a threat to withhold funds if program standards were not satisfactorily met."[38]

In the 1960s new programs for medical care and welfare assistance were introduced and were once again funded by a series of conditional grants. This time, however, due to provincial demands for flexibility, the conditions attached to these funds were much less rigorous. Many of the poorer provinces, for example, had been critical of federal matching grants in the past as they created a two-tier system in Canada with superior programs going to those provincial governments better able to match those funds contributed by Ottawa. Even the richer provinces were critical of previous conditional grants as they tended to distort priorities in provincial spending and created an incentive to initiate shared cost programs regardless of the need for other more appropriate local initiatives. Ottawa responded to this criticism by lessening the conditionality of the new shared cost programs and introducing the Canada Assistance Plan (CAP). CAP essentially consolidated the four

existing social welfare programs and paved the way for the introduction of a new national health care plan in 1966. Medicare marked a departure from previous programs in that only a broad criteria of conditions were required to be met by the provinces and Ottawa also agreed to pay 50 per cent of the national average per capita cost of these services, multiplied by the population of each province. This went further than any previous program in that Ottawa had now agreed to recognize the different fiscal capacities of individual provinces.

Faced with rising inflation and increasing program costs the federal government attempted to reduce its funding responsibilities to the provinces during the 1970s. Although CAP was not targeted Ottawa did undertake an extensive review of existing medical care, hospital care, and post-secondary education programs and recommended the adoption of "block-grant" funding. Block grants would be calculated based on population and growth of GNP and then transferred to the provinces with relatively few conditions attached. Provincial governments were initially extremely critical of these proposals as they shifted a heavy financial burden to the provinces and were seen as an attempt by Ottawa to abandon its responsibilities for these expensive programs. The federal government responded with the EPF in 1977 which meant that federal funding would now be split into two parts, the aforementioned tax points, and a series of block grants previously proposed by Ottawa in regards to its existing shared cost programs. The only conditions attached to the new block grants were related to health care and the existing basic provisions outlined in medicare and hospital care legislation. Both Ottawa and the provinces were satisfied that the EPF met the concerns of each level of government. It placed a lid on federal funding for programs and gave the provinces greater flexibility in areas of fiscal policy they believed to be under provincial jurisdiction.

As Canada entered the 1980s it soon became apparent that there were several problems associated with the new EPF arrangement. Not only had the federal government overestimated the yield of transferred tax points, but it also accused the provinces of neglecting both post-secondary education and health care (namely by allowing doctors to "extra-bill" patients for costs not covered under insurable amounts). The provinces, on the other hand, felt that the unconditional nature of the grants allowed them to spend the money as they pleased and interpret whether or not there were any violations of the principles of medicare. The federal Liberals, who were re-elected under Pierre Trudeau in 1980, responded by attempting to regain federal control over domestic fiscal policy. Although Trudeau announced that EPF funding was to be drastically reduced in response to the federal deficit most observers saw the move as a means of squeezing the provinces and setting up new health and welfare programs directly controlled by Ottawa. Regardless, the federal budget of 1981 formalized the federal government's position on the EPF and

marked the beginning of reduced federal contributions for existing shared cost programs. In fact, EPF contributions steadily declined during the 1980s from a growth of 6 and 5 per cent in 1984 and 1985 respectively to a level of 2 per cent from 1986 to 1990. The 1991 budget extended the 2 per cent freeze through to the end of 1994-95 and despite a pledge to return to a level of 3 per cent growth the 1995 budget maintained the previous levels of funding. Although Trudeau may have initially intended to regain central control over fiscal policy it is now clear that the exact opposite has happened. As the new Canada Health and Social Transfer (CHST) suggests, and this will be discussed in greater detail at a later point in the chapter, every province is now faced with the difficult task of financing a number of shared cost programs with only limited federal assistance.[39]

The Canada Assistance Plan has also undergone a significant reduction in federal assistance during the 1990s. Although CAP was originally intended to provide 50 per cent of eligible provincial and municipal government expenditures on social assistance and welfare services these funds were reduced to 28 per cent in Ontario, 47 per cent in Alberta and 37 per cent in British Columbia.[40] The cap on CAP, which was initiated in 1990, also meant that previous matching grants were now nothing more than lump sum block grants that were rarely tied to specific programs. The net result was such that additional expenditures on programs previously covered by CAP were no longer cash shared as they were in the past. In fact, the provinces were now forced to cover these additional costs entirely from own-source revenues. The budgetary consequences of these developments are obvious but it also became clear that the reduction of CAP funding had implications for Canadian federalism as well. Specifically, the cap was discriminatory in that it only applied to the "have" provinces and the growing federal deficit was such that on-going pledges to reinstate the 50 per cent funding level of the past were no longer a realistic goal. As such, the very principle that led to the creation of the CAP in the first place, namely the fiscal equality of the provinces, was no longer attainable under the federal-provincial arrangement during the early 1990s.

Ottawa's attempt to manage federal-provincial fiscal relations through a series of tax sharing agreements, the Established Programs Financing, and the Canada Assistance Plan, was set aside as federal concerns over deficit reduction reduced the effectiveness and equality of these programs. At the same time, it is clear that domestic fiscal relations further contributed to the decentralization of Canadian federalism. From a fiscal standpoint, not all provinces were pleased with the evolving federal-provincial relationship in this area of economic policy. It should also be noted that decentralization was perhaps a natural outcome of the on-going evolution of fiscal arrangements in Canada. Most provinces had sought greater flexibility in federal-provincial fiscal policy for decades.

Quebec, for example, as early as 1947 chose to opt out of federal tax rental arrangements and in 1954 the province also introduced its own personal tax (it had its own corporate tax structure since the end of the Second World War). Quebec also negotiated several agreements with Ottawa during the 1960s which allowed it to "contract-out" a number of federal shared cost programs. A more influential role for the provinces also emerged out of the federal-provincial conferences on the economy that were initiated during Trudeau's efforts to introduce wage and price controls during the early 1980s. It is, however, unlikely that any of the provinces expected the significant decrease in federal funding that arrived with the economic reality of the 1980s and 1990s. As a result, it would appear that the on-going decentralization of federal-provincial fiscal relations in Canada remains inevitable.

Regional and industrial development strategies are common economic tools employed by governments throughout the global economy and are another factor contributing to the economic decentralization of Canada. Stabilization policies, for example, are used both to measure and correct the degree of success or failure of the national economy as a whole. Most regional and industrial development strategies are based on the premise that Canada is not a single economy but rather a series of regional economies based on different industrial strategies and available natural resources. These differences provide a certain flexibility to the Canadian economy. They also present a number of other challenges including varying employment rates and regional disparities in economic and population growth. As Michael Hart has noted, "the vastness of our country and the dispersion of our people have made regional variation inevitable. Vancouver is farther from Ottawa than Kiev is to London while a trip from Halifax to Whitehorse can take longer than flying from Rio to New York. Differences in the endowment and performance of the regions, therefore, are an important characteristic of the Canadian economy and a major challenge to policy makers."[41]

The reality of the domestic Canadian economy is such that all regions are dependent on trade and investment but all are forced to rely on different markets and concentrate on a limited number of products. British Columbia, due to its proximity to the diversified economies of Asia, is the only province not primarily dependent on trade and investment with the United States. The Atlantic provinces rely on the American market and traditional resources such as timber, agriculture, and fishery products. Quebec exports agriculture, energy, and forestry products to both Europe and the United States while Ontario concentrates on manufactured products, primarily automobiles and parts. The prairies, on the other hand, depend on agriculture and energy-based resources and industry. These varying interests all contribute to a regionally fragmented economy. The net result is not

the east-west integration envisioned by the National Policy of Macdonald. It instead reinforces a north-south economic integration and reliance on the American market that a number of observers have viewed with increasing alarm.[42] Unfortunately, it also increases a competitive economic environment within the Canadian domestic economy. "Not only does this trend render more difficult national policy-making for restructuring and adjustment, but it also erodes the economic underpinnings of political integration."[43]

Regional and industrial development strategies have a long history in Canada. Dating back to the Second World War provinces and other local governments have attempted to attract business and investment by offering a number of economic incentives. As the fiscal tax system began to decentralize during the 1960s provincial governments were able to offer increasingly attractive benefits related to both increased taxation revenues and federal equalization payments directed to all but the most wealthy provinces. These incentives, many of which are still in use today, included loans, tax holidays, guarantees for corporate borrowing in the private sector, and even direct equity participation by provincial governments. In addition to direct financial aid the provinces were also able to provide infrastructure at the expense of local taxpayers, favourable terms for the harvesting of crown timber and other resources, and commitments to limit potential labour disruptions from local unions and business organizations. Regardless of the local economic effects of these initiatives they have been criticized for reinforcing the perception that Canada is nothing more than the sum of ten different industrial strategies further dividing what is already a deeply fragmented economy. Further, not only does the political motivation behind most regional incentives weaken Canadian international competitiveness, it also encourages the redirection of taxation for the benefit of business, which limits the ability of local governments to provide services required by taxpayers. As Stevenson suggests, "the poorer the province's natural advantages, the larger incentives it must offer, and the greater the regressive effect. Since the size of incentive needed to attract investment can never be estimated precisely, the incentives must be too generous if they are to be successful."[44]

Ottawa has made several efforts to coordinate regional development strategies with the provinces. The 1957 Royal Commission on Canada's Economic Prospects acknowledged that some assistance was required for the struggling Atlantic provinces. The Diefenbaker and Pearson governments also instituted modest programs in the agriculture and resource sectors. It was not until 1968, however, that the issue of regional disparity became a focal point of federal-provincial relations. Some observers suggest that this interest was directly related to the Trudeau government's attempts to counteract the rising tide of Quebec nationalism prevalent during this period. Quebec portrayed itself as an economically weak province, especially in comparison to Ontario, and suggested it was

a victim of Canadian federalism as its francophone population could not migrate to provinces with stronger economies due to its unique historical culture. Stevenson argues that although the "Trudeauvian approach to Quebec's grievances generally emphasized the goal of individual rather than collective well-being, the strengthening of the Quebec economy was a high priority for this reason. At the same time, however, the even more deprived Atlantic provinces could not be ignored without exposing the government to credible charges of discrimination."[45]

The result was the creation of the federal Department of Regional Economic Expansion (DREE). The main task of DREE was to coordinate regional infrastructure programs and develop incentives for industrial expansion and relocation. At the same time DREE was also responsible for maintaining agricultural and rural development initiatives already in existence. Of these new responsibilities it was generally accepted that infrastructure programs, such as roads and highways, would provide the greatest opportunity for federal-provincial collaboration. Initiatives for industrial investment, on the other hand, often paralleled similar efforts by the provinces and usually fell under the exclusive control of Ottawa. Initially, DREE concentrated its budget on industrial incentives but these were viewed suspiciously by the Canadian electorate as a form of "corporate welfare" and a number of critics questioned their effectiveness. Sectoral and government interests in the United States also made it clear, as they do in contemporary trade disputes, that these programs were in their view nothing more than a means of subsidizing non-competitive Canadian industries.

Following the 1972 federal election industrial incentives were de-emphasized in favour of coordinated federal-provincial trade and investment strategies. General Development Agreements (GDAs), which called for the implementation of jointly funded and coordinated regional development strategies, were negotiated with all the provinces (with the exception of Prince Edward Island which had its own pre-existing arrangement with Ottawa) and all participants had equal access to the DREE budget. By 1984, however, DREE essentially ceased to exist. By this time the initial ten year duration of the GDAs had expired and the political climate had changed dramatically in the wake of Prime Minister Trudeau's retirement. In its place DREE was replaced by the new Department of Regional Industrial Expansion (DRIE) which took over a number of DREEs previous responsibilities and also incorporated much of the now defunct Department of Industry, Trade and Commerce. Several new agreements, which replaced the old GDAs, were also successfully negotiated between Ottawa and the provinces by the end of 1984. Therefore, by this time "federal and provincial programs of regional development were thus generally

harmonized, essentially by the easy device of having the federal government subsidize provincial programs and objectives rather than pursuing objectives independently."[46]

Despite the apparent peace that appears to exist between both levels of government on the issue of regional development it is important to point out that currently there is no harmonized national economic plan or industrial strategy. Efforts to date have been unsuccessful and both Ottawa and the provinces have continued to disagree on a number of fundamental issues required for a more coordinated approach to economic trade and investment. As the demise of the Charlottetown Accord illustrates it is also unlikely that the regional "harmony" required for such a plan will exist any time soon. As Stevenson points out, there are serious political risks for the federal government whenever it sponsors a particular program for a specific province or region. Any initiatives supporting the industrial economy of Ontario "must, for political reasons, be counterbalanced by measures to favour the natural resource industries and agriculture of the western provinces or to prop up the moribund steel industry of Nova Scotia, the textile industry in Quebec, or the inshore fisheries of Newfoundland. The Canadian economy thus pays a heavy price for the obsessive jealousies between the provinces."[47]

In addition to federal-provincial fiscal relations and regional industrial strategies, the historic claims by the provinces to the ownership of indigenous natural resources have also had a decentralizing influence on Canadian federalism. Of all the forces contributing to economic decentralization in Canada provincial control over natural resources is perhaps the most difficult to counteract by Ottawa. This is due to the fact that section 109 of the BNA Act allocates exclusive control of these resources to the provinces. The original Act stipulates that the lands, mines, minerals, and royalties belonging to Nova Scotia and New Brunswick would also be granted to Ontario and Quebec. Most of the other provinces were also extended the same control upon entering confederation. The prairie provinces were not originally given the same jurisdictional authority over natural resources, due largely to the fact that they were formed out of territory that already belonged to the federal government. Political and populist pressure from the region during the 1920s and 1930s, however, contributed to Ottawa's decision to extend the same powers to the governments of Manitoba, Saskatchewan, and Alberta. Section 109 was supposed to guarantee a source of revenue for the provincial governments but it also contributed to the early growth and economic diversification of those provinces with abundant supplies of these resources. As one observer suggests, "since resources are, in practice, very unevenly distributed, section 109 made a major contribution to the much-discussed phenomenon of regional disparities."[48]

Ontario was one of the first provinces to exploit the economic benefits of resource control by placing considerable restrictions on the harvesting of timber on Crown lands as early as the nineteenth century. In the ensuing years, however, most provinces began to shift their attention to the production of hydro-generated electrical power. Concerned with competition from Quebec and the United States, the Ontario government pioneered the use of hydro-electricity as an affordable means of power for its growing manufacturing sector. Other provinces, such as Saskatchewan, Manitoba, New Brunswick, Quebec, and British Columbia, also developed local power supplies and the export of hydro and thermal generated electricity soon became a dominant symbol of provincial control over energy resources.[49] The most recent federal-provincial dispute over hydro-electricity, which involves British Columbia's decision to cancel the Kemano Completion Project (KCP), once again illustrates the capacity of the provinces to act independently in terms of natural resource policy. It also provides an indication of the potential impact of societal interests on matters of economic policy involving both levels of government. The KCP was actually the second phase of an agreement signed between the province of British Columbia and Alcan Resources in 1949. Under the original agreement the Nechako River was dammed in order to provide power for Alcan's aluminum smelter in Kitimat situated 80 kilometers to the north. Both parties also agreed that Alcan had until 1999 to develop any additional hydro-electric power on the Nechako and Naninka river systems. In 1987, however, Alcan negotiated a new deal with the federal and provincial governments to twin the existing water tunnel running through Mount Dubose. The 1987 agreement also acknowledged that the headwater levels of the Nechako would be reduced to less than 12 per cent of its natural flow. Also included was a clause that appeared to relieve Alcan from any expenses that arose "from any future remedial requirements imposed by any public hearing or regulatory process."[50]

Following the agreement the Kemano Completion Project quickly became a focal point of criticism for a number of environmental groups within British Columbia. In response to the negative reaction the B.C. Utility Commission initiated a comprehensive study of the project that concluded that the KCP would deplete the Nechako of water needed to sustain its salmon population. The report also recommended a number of options that would allow the project to be completed.[51] By January 1995 the controversy surrounding the KCP was such that the environmentally-conscious NDP government felt it had no alternative but to cancel the project. Alcan, which had halted the KCP in 1991 pending the outcome of the report, made it clear that it would be seeking compensation for the $535 million it had already spent on the $1.3 billion project. Almost immediately after the cancellation "a potentially nasty-and expensive-fight over who should pay the bill broke

out between the B.C. government and Ottawa."[52] Premier Mike Harcourt argued that as the report from the Utilities Commission concluded the KCP was injurious to fish stocks it was the federal government, specifically the Department of Fisheries, that was responsible for ending the project and compensating Alcan for its losses.[53] Federal fisheries Minister Brian Tobin, on the other hand, argued that the termination of the KCP and the issue of compensation were both provincial matters. Revenue Minister David Anderson, who ironically was British Columbia's sole representative in the federal cabinet, also reinforced the hard line adopted by Tobin and suggested that Harcourt's demands for compensation by Ottawa "conveniently ignored a 30-year history of B.C. governments aggressively endorsing Alcan's Kemano Completion Project." Anderson also made it clear that in his opinion the province of British Columbia had "to be a little more realistic about its comments on who was to blame."[54]

Some observers argue that the Kemano Completion Project, and the province's long-standing tradition of conflict with Ottawa on the issue of hydro-electricity, provide considerable insight into how British Columbia perceives its role in the Canadian federation. Most residents of British Columbia believe that the province has its own unique identity that differentiates itself even from the rest of western Canada. Although B.C. and the prairie provinces have all relied heavily on the export of natural resources and have expressed considerable dissatisfaction with national tariff and transportation policies there is the recognition that British Columbia has cultivated its own distinct economic relationship with the Pacific Rim (not to mention its physical isolation from the rest of Canada by the Rocky Mountains). According to Norman Ruff, British Columbia has remained an effectively isolated actor in Canadian federalism since the dispute over the development of the Columbia River Basin in the 1960s. Specifically, Ruff suggests that the period from 1952-1974 was such that W.A.C. Bennett actively discouraged regular intergovernmental contacts. "Conference participation by cabinet ministers and their officials was tightly controlled and at times curtailed. Recruitment to the senior levels of the provincial public service from outside B.C. was rare, and restrictions on travel and long distance telephone calls inhibited participation in the expanding communications network enjoyed by other governments.[55] The election of the New Democratic Party in 1972 temporarily ended the "isolation" of British Columbia, but the subsequent Social Credit governments of Bill Bennett, William Vander Zalm, and Rita Johnson all continued to battle the federal government on a wide number of issue areas. As a former provincial official once suggested the attitude of British Columbia can be summed up in three sentiments: "the aren't we lucky to be living in British Columbia feeling, a feeling of

economic disadvantage by association with Canada, and a feeling of impotence in matters relating to the central government."[56]

When examining the decentralizing impact of energy policy it is also important to acknowledge the history of federal-provincial conflict in the oil and gas sector. The production of crude oil in Canada began in the immediate post-war period with the opening of the Leduc oil field near Edmonton in February of 1947. Since that time Alberta has been responsible for providing up to 80 per cent of domestic oil and gas. British Columbia gas and Saskatchewan oil have contributed the balance. For the most part relations between Ottawa and Alberta were cordial in the early years of production. Although imported oil was cheaper than domestic supplies the federal government actively developed markets for the province's petroleum products.[57] During the 1970s oil embargo by the Organization of Petroleum Exporting Countries (OPEC), however, world prices dramatically increased and Canadians began to realize that domestic reserves of oil and gas were limited in quantity. As a result, the international conflict between producing and consuming nations over the price and availability of oil and gas was extended to the domestic level.

The resulting animosity between Alberta and the federal government was unprecedented in the history of Canadian federalism. The province saw the international oil crisis as an opportunity to raise domestic prices to increase profits for local companies and provide new sources of royalties for the Progressive Conservative government. Ottawa, however, declared that the domestic price of oil would be kept below international levels to ensure that the Canadian market had guaranteed access to affordable supplies of crude oil. Faced with combined pressure from Ottawa and the remainder of the provinces Alberta capitulated and accepted a reduced price for its petroleum products within Canada. By 1973 Alberta was essentially providing oil for the majority of the country and although prices were higher than before the OPEC embargo the provincial government was unable to market its petroleum at world prices. A series of pipelines were completed by 1976 that allowed Quebec and the Maritimes to continue to use imported oil and an extensive system of federal subsidies ensured that these markets would continue to pay the reduced domestic price for oil. Finally, "in 1975 Parliament adopted legislation allowing the federal cabinet to unilaterally set the price of any oil that was transported across a provincial boundary and to ration supplies in the event of scarcity. Exports of crude oil to the United States were virtually ended, apart from some low-grade oil that could not be processed by Canadian refineries."[58]

The re-election of Pierre Trudeau in 1980 and the Liberal government's decision to implement the National Energy Program (NEP) plunged relations between Ottawa and Alberta to an all-time low. The NEP allowed for a gradual increase in domestic prices, but

continued to limit Alberta's ability to raise costs to those at the international level. As Stevenson notes:

> The NEP provided for special federal taxes on the output of natural gas and on the profits of oil and gas companies. Complicated tax incentives were offered to encourage the substitution of gas for oil, the growth of Canadian ownership in the petroleum industry, and the shift of exploration and production away from Alberta toward the northern and offshore areas (described as "Canada lands") where the federal government would collect royalties. Finally, the NEP provided that the Crown (meaning Petro-Canada) would automatically acquire a 25 per cent interest in any petroleum discovered on "Canada lands."[59]

Not surprisingly, the government of Alberta was quick to condemn the NEP. The provincial government threatened to reduce its supplies of oil and gas to drive up domestic prices and Western separatist movements began to receive considerable attention from Albertans upset over what they perceived to be unfair federal controls. Ottawa was also faced with further pressure from the Reagan administration which viewed the protectionist subsidies of the NEP as a direct violation of existing trade laws. These factors forced Ottawa to re-evaluate the NEP and in September of 1981 the federal government signed a new agreement with Alberta that raised the domestic price of oil and promised a number of energy related "mega-projects," the most famous of which involved the extraction of synthetic oil from provincial tar sands. Both levels of government had signed the 1981 agreement based on the assumption that oil prices would continue to rise but it soon became apparent that the artificially inflated prices of the international level were beginning to fall. As prices declined the level of conflict between Ottawa and Alberta also began to diminish. By the time Brian Mulroney was elected in 1984 the NEP was in its final stages and the Western Accord of 1985 marked what some have called a "complete federal surrender" to the producing provinces in the oil and gas sector.

There are some observers who suggest that, just as with the issue of hydro-electricity in British Columbia, the NEP offers considerable insight into Ottawa's perception of the "role" of the prairie provinces in Canadian federalism. As Smiley has noted, the "Canadian prairies were at the first and to some considerable degree remain an economic colony of the country's central heartland."[60] John Richards and Larry Pratt have argued that it was not until the 1970s that the governments of Alberta and Saskatchewan managed to emerge as effective entrepreneurial actors in staple-led economic development. Not only was intergovernmental tension high over oil and natural gas during this period but Alberta's sense of isolation was further exacerbated due to its lack of western representation amongst the Liberal majority in the House of Commons and the fact that the Supreme Court of Canada was also challenging provincial control over natural resources.[61]

According to Smiley, "the region's new-found prosperity was based on a favourable conjuncture of circumstances related to resource development... at the very time Ottawa had asserted that such resources should be in large part exploited for national purposes and that the national government should be the significant beneficiary of this process, although in the past the federal authorities had shown little or no disposition to challenge the jurisdiction of other provinces over resources."[62] In sum, the importance of the struggle between Alberta and the federal government over energy policy during the 1970s and 1980s should not be underestimated. As Smiley suggests, "never in the history of Confederation has the economic dominance of the centre been so effectively challenged by the peripheries."[63]

From the above discussion it is clear that a number of factors continue to contribute to the on-going economic fragmentation of Canadian federalism. At the same time, however, there is perhaps no better symbol of economic decentralization in Canada than the domestic barriers that exist between the provinces in relation to the free movement of labour, capital, commodities, and services. The British North America Act prohibited the use of provincial tariffs, but it also allowed a number of other mechanisms to restrict the domestic exchange of goods and services within Canada. Each province, for example, can restrict resource exports by requiring the processing of these products within provincial boundaries or by claiming these natural resources necessitate protection for conservation purposes. The courts have struck down these measures in the past, based on the grounds they violate the federal control of trade and commerce. Yet the addition of section 92A to the Constitution Act 1982 has in the opinion of some observers strengthened the legal rights of the provinces in this area of policy. Further, provincial governments can also give preference to local producers and suppliers when awarding government contracts. As the provinces purchase more goods and services than the federal government and given "the size of the public sector in the Canadian economy, the practice of government procurement constitutes an explicit distortion which tends to limit the size of interprovincial trade."[64]

In addition to restrictions on natural resources and government procurement the provinces also maintain monopolies or near monopolies on the sale of alcoholic beverages and agricultural products. In an effort to raise revenues provincial liquor control boards carefully regulate the sale and importation of all alcohol with a special emphasis on wine and beer. Most liquor boards allow the importation of beer from other countries. The restrictions that exist on provincial imports, however, are such that most companies are forced to operate breweries in every province. Several provinces also discriminate in favour of local wine-makers by imposing extremely high markups on other Canadian products. Some liquor control boards even go as far as refusing to allow other domestic

wines on provincial shelves. Discriminatory policies are also in place at the provincial level for the marketing of agricultural products. Initially the federal government attempted to regulate the sale of agricultural goods through a centralized Dominion Marketing Board. The Judicial Committee of the Privy Council, however, ruled in 1937 that this was unconstitutional and the provinces responded by establishing their own marketing boards. The most serious disputes to date occurred during the 1970s and centered on the sale of dairy and poultry products with Quebec protecting local egg producers and Ontario giving its provincial board the right to impose similar measures for locally produced broiler chickens. The level of conflict that developed between the two provinces in the dairy and poultry sectors became so extreme that the federal government was forced to step in and implement the National Farm Products Marketing Act in 1972. These new federal boards were supposed to eliminate conflict and regulate the sale of chicken and eggs, but serious restrictions still exist at the provincial level for the sale of these commodities.

Current disputes and new efforts aimed at dismantling existing interprovincial trade barriers offer a good indication of both the content and decentralizing impact of domestic protectionism. The Canadian Manufacturers Association has estimated that interprovincial barriers cost Canadians up to seven billion dollars a year. Nonetheless there is still considerable reluctance to remove these impediments to trade. As in the past, progress on these issues usually comes only after one party has forced the other to the bargaining table. On December 24, 1993, for example, Ontario and Quebec reached an agreement that removed travel restrictions on labour forces from both provinces. In the past Quebec would only issue 300 work permits to Ontario construction workers a year even though Quebec residents were free to work on Ontario job sites with only limited restrictions. After numerous efforts to negotiate an agreement between the two provinces failed the Ontario government responded by devising a strategy that matched the Quebec restrictions rule for rule. Quebec construction firms, especially those in Hull which relied on work available in the Ontario market, quickly condemned the move and it was not long before the provincial government was forced to make a deal eliminating numerous labour, contracting, and procurement restrictions on both sides. There is no question that the agreement, signed in May of 1994, offered a marked improvement over the status quo but it did not come without a degree of "brinkmanship" from both provinces.

Recently completed negotiations between Ottawa and the provinces on the removal of a wide range of interprovincial trade barriers also suggests that optimism over a Canadian economic union may be somewhat misguided. Efforts to remove these barriers were first initiated during the early stages of the Charlottetown Accord. In June of 1993, however, both levels of government finally agreed to enter into formal negotiations on the

elimination of existing domestic protectionist measures. A draft proposal was completed by February 14, 1994, but several provinces were unwilling to consider a number of issues in this tentative agreement. Ontario, for example, was concerned that the deal would grant exemptions to the have-not provinces allowing them to protect selected industries. Quebec and Ontario also lobbied for the exemption of Crown corporations, such as Ontario Hydro and Hydro-Quebec, from the chapter dealing with government procurement. In the end Ottawa and the provinces managed to meet their self-imposed deadline of June 28, 1994, and agreed in principle to an agreement that established a federal-provincial dispute mechanism, similar to those in the FTA and NAFTA, and included chapters on agriculture, transportation, procurement, investment, labour mobility, natural resources, environmental protection, consumer standards, and communications. The deal did not include the contentious sectors of alcoholic beverages and energy and there was only limited progress on the issues of agriculture, Crown corporations, and the removal of exemptions for local regional development. As one observer suggested shortly following the agreement, "for all the hosannas and hallelujahs, Canada is still without a full common market. ... Indeed, with this agreement, the first ministers have now actually legitimized the use of a number of restrictions."[65]

From the preceding discussion two general conclusions can be made regarding the economic decentralization of Canadian federalism. First, while the following chapters touch on a number of important international factors it is clear that domestic variables, many of which are unrelated to external developments, continue to have an impact on federal-provincial relations in Canada. Second, and perhaps more importantly, these issues all demonstrate the increasingly limited capacity of the federal government to develop independent policy initiatives aimed at maintaining control of the domestic political economy. This does not mean that Ottawa has completely lost its ability to coordinate economic initiatives and/or co-opt the provinces into the policy process. As this analysis suggests, the federal government continues to enjoy moderate success in its ability to manage the role of the provinces in the formulation of Canadian foreign economic policy. Overall, however, when looking at domestic considerations it is difficult to deny the ongoing economic regionalization of Canadian federalism. Not only are natural resources, such as timber, wheat, and energy, naturally distributed on a regional basis but the provinces maintain constitutional control over the growth areas of the domestic economy, namely, labour, training, and the environment.

Federal Efforts to Limit Decentralization

From the above discussion it is clear that the economic decentralization of Canadian federalism can be traced to a number of factors, each with its own historical legacy. At the same time it is also important to acknowledge the fact that various measures designed to enhance central control have been in place since confederation. As the following discussion suggests, however, many of these mechanisms have failed to ensure federal dominance in Canadian federalism. Perhaps the oldest, and in some ways the least effective, means of managing federal-provincial relations involves the powers of reservation and disallowance. Although the BNA Act granted Ottawa these powers as a means of resolving conflict between the federal government and the provinces they were only used sporadically and most often against the "new" provinces of the West. In fact, almost "half the acts that have been disallowed or reserved since the death of John A. Macdonald were from the single province of British Columbia, and after [Wilfrid] Laurier's defeat in 1911 both powers became virtually extinct, apart from the brief revival of disallowance in relation to the Alberta Social Credit legislation between 1937 and 1943."[66] There are a number of reasons contributing to the ineffectiveness of reservation and disallowance. Early decisions by the Judicial Committee of the Privy Council (JCPC), such as the Maritime Bank case, tended to reinforce the British belief that there should be more equality between Ottawa and the provinces than was outlined in the BNA Act. It also became extremely clear to Ottawa that the use of either power, especially against the larger provinces which were so crucial for electoral success, carried with it the danger of potential political repercussions. Furthermore, there was the reality that any given provincial legislature could simply continue to adopt the same law that had been reserved or disallowed forcing Ottawa to admit defeat or continue the process repeatedly, again with potentially negative political results. There is little, if any, evidence to suggest that the powers of reservation and disallowance will play a prominent role in future federal-provincial relations in Canada. The fact that no province regarded this as a major priority during negotiations for the Meech Lake and Charlottetown Accords "testifies to the almost universal expectation that the powers will never again be exercised."[67]

Another important element of federal-provincial relations that has come under scrutiny is the impact of political parties on Canadian federalism. As Smiley once lamented, if anything was ever said about parties in the past it was "to the effect that the Liberals and Conservatives by acting as brokers among divisive cultural and regional interests played a nationally integrative role."[68] Recent studies have reached different conclusions.[69] It is clear that political parties in Canada do not serve as instruments of

federal control over domestic intergovernmental relations. In the first place, if parties had an integrative function one would assume to find a correlation between federal and provincial voting patterns. Specifically, shifts or changes in the voting behaviour at one level would expect to be reflected in the affiliation of the electorate at the other. This, however, is not the case in Canada. In fact, party affiliation is extremely weak, with voters frequently switching political allegiances. Harold Clarke, Jane Jenson, Lawrence Le Duc, and Jon Pammett indicated that "only a minority of respondents report feeling the same degree of attachment to the same party at both the federal and provincial levels."[70] Although the work of Clarke and his colleagues has come under attack for its rather rigid measures of voter identification it does draw attention to the "flexible partisanship" often displayed by the Canadian electorate. The current success of the federal Reform Party and the Bloc Quebecois would appear to provide further evidence of this phenomenon.

The party system in Canada is also split between federal and provincial levels. Some observers suggest this is directly related to the geographic reality of Canadian federalism. In other words, it is difficult to appear as a "credible defender of regional interests if ties to the federal government are extremely intense. Significantly, the traditional two-party system has survived at the provincial level only in the Atlantic provinces, which are so dependent on federal largesse that affiliation with the federal government is still an electoral asset."[68] Reginald Whitaker has also argued that the two-tier party system in Canada is in part related to the long time electoral success of the Liberal party during this century.[72] In his account Whitaker suggests that the Liberals remained in power for so long that the political and electoral arms of the federal bureaucracy became virtually integrated. "The bureaucracy supplied the party with ideas, programs, and even personnel such as Pearson and Pickersgill. In return the federal party's behaviour in federal-provincial relations was determined by bureaucratic rather than partisan considerations."[73] In fact, during this early period federal Liberals would often abandon their provincial counterparts, especially in the four largest provinces, if it was politically expedient to do so. Once removed from office in 1957 the Liberals set out to rebuild their organization but did so in a way that essentially shut out the provincial arms of the party. Although the New Democratic Party and the once mighty Progressive Conservatives are much more integrated than the Liberals neither have provincial organizations in Quebec. Furthermore, even though unity may help facilitate the resolution of federal-provincial disputes if the same party is in power at both levels there is no guarantee that conflict will not take place. In fact, Stevenson argues that these ties may in fact "expose the federal party to conflicting pressures from its various provincial affiliates."[74] The Reform Party's current rejection of plans to expand into provincial politics also appears to reinforce the fact

that political parties in Canada do not actively pursue the development of co-dependent party infrastructure for both levels of government. As such, parties could hardly be considered to be unifying elements in Canadian federalism.[75]

Judicial interpretation is another means in which federal-provincial conflict can be mediated. This is not to say that all judicial rulings are related to specific intergovernmental conflicts. In fact, most cases are brought forward by independent litigants. Even these "reference" cases, however, have an impact on intergovernmental disputes. Reference cases, which occur when a government refers its own legislation or that of any other level of government to the courts for advice in an attempt to strengthen its bargaining position or resolve a dispute between specific governments and/or the general public, have included rulings on the control of alcoholic beverages, insurance regulation and agriculture. Essentially, judicial review is a procedure in which the courts "consider laws and executive acts in the light of whether or not these conform with the terms of a constitution and then validate or invalidate such expressions of legislative or executive will accordingly."[76] Although the BNA Act did not explicitly allow judicial review it was granted by the British as a means of appealing the laws of colonial legislatures. The JCPC, which consisted of members of the House of Lords in Britain, was the forum in which these cases were heard until 1949 when the final authority to rule on such matters was finally turned over to the Supreme Court of Canada. Given the "colonial" nature of these arrangements there has been considerable focus on the early rulings of the JCPC. Some have stepped forward to defend the JCPC but others have been much more critical.[77] Most, however, tend to reflect the comments of Peter Russell who suggests that judicial review as a means of ruling on the validity of Canadian legislation during this period was "as much a corollary of imperialism as of federalism."[78]

The Constitution Act, 1982, finally gave judicial review a much more explicit role in Canadian federalism. In addition, the Charter of Rights, and Freedoms also expanded the traditional role of the judiciary in terms of interpreting the Constitution.[79] There were also two previous developments that took place prior to constitutional reform that "enhanced the importance of the Supreme Court of Canada as umpire of the federal system."[80] First, amendments were made to the Supreme Court Act by Parliament which eliminated the right of private litigants to appeal to the Court in civil cases that exceeded $10,000. Up until that time most of the cases brought before the Court involved issues of private law as opposed to matters of legal principle. In addition to the narrowing of the appeal process the Supreme Court was also faced with what Russell referred to as a "veritable explosion" of constitutional litigation. The rapid increase was a result of both levels of government challenging existing legislation as well as Ottawa and the provinces

supporting private litigants. As Smiley has noted, many of the decisions rendered by the Court since this period "have involved matters of crucial interest to the federal and provincial governments: the control over the development of natural resources and the public revenues from such development, telecommunications, language policy, the respective roles of Ottawa and the provinces in constitutional change, and so on."[81]

Obviously, these changes, and those that took place as a result of the Constitution Act and the Charter of Rights and Freedoms, had the potential to alter the federal-provincial relationship in Canada. To date, however, studies of the Supreme Court have not found a centralist bias in the decisions that have been rendered, despite the fact that judges are appointed by the federal government.[82] Regardless, the increased role of judicial review in Canadian federalism raises an important question. First of all, is the Court even an appropriate forum for reviewing these issues? Some observers argue that the Court's focus on concrete legal issues does not prepare it for any role it might have in managing intergovernmental relations or the domestic economy. These same critics point out that federal-provincial bargaining has proven to be historically successful in addressing these issues, especially in terms of fiscal policy and the welfare state.[83] To date Ottawa has sought to strengthen its position in relation to the provinces by relying on less formal measures to manage intergovernmental relations. Smiley defined these linkages, which he referred to as executive federalism, as "the relations between elected and appointed officials of the two orders of government in federal-provincial interactions and among the executives of the provinces in interprovincial interactions."[84] If the definition of Canadian federalism is taken literally, however, namely two levels of government independent of one another in exclusive areas of jurisdiction, it is possible to envision a state in which there is very little interaction between Ottawa and the provinces. In fact, the Fathers of Confederation believed that regional and cultural differences could be maintained under a centralized system of government by allocating the "local" issues of education, health and welfare, municipal institutions, and property and civil rights, to the provinces. As a result, there are no provisions in the BNA Act that stipulate a method of intergovernmental communication. During the twentieth century, however, it has become clear that the precise allocation of jurisdictional authority between both levels of government is impossible. Matters not even mentioned in the BNA Act have come to dominate the political agenda and the distribution of revenues has become increasingly difficult given the uneven regional economy of Canada. The result is a situation "in which federal and provincial governments are both interdependent and autonomous and in which there is a relative lack of institutional machinery for effecting the authoritative resolution of conflicts between them."[85]

All of these factors have resulted in a need for policy coordination between the federal government and the provinces. Gordon Robertson has attributed the development of these linkages to the lack "of an effective forum for regional advocacy and brokerage within our institutions at the federal level of government."[86] As outlined previously, the original BNA Act was designed to maintain central control and did not allocate institutional or jurisdictional resources to the provinces in order to represent regional interests at the federal level. Since the turn of the century the most common way to address these concerns was the use of federal-provincial conferences. Laurier called a conference in 1906 to discuss changes to statutory subsidies and other meetings took place in 1910 and 1918 to review company law reform and post-war reconstruction respectively. Four more were held during the Depression and another conference followed the end of the Second World War. In the post-war period conferences took place approximately every five years, mainly to review federal-provincial finances, although another meeting was held in 1950 to discuss constitutional reform. Federal-provincial conferences took on new significance in the 1970s as constitutional issues once again dominated the agenda but these meetings were still infrequent and could hardly be considered a predominant mechanism of interaction between Ottawa and the provinces. As Stevenson suggests, "for the most part federal-provincial relations in the post-war period remained fragmented, specialized, uncoordinated, and dominated by officials."[87]

Federal-provincial relations, however, became much more "political" during the latter stages of the post-war period. The Quiet Revolution in Quebec provided the first indication that traditional means of intergovernmental interaction were no longer adequate. Issues such as the negotiations between Lester Pearson and Jean Lesage over Canada and Quebec pension plans, and matters involving other provinces including mineral resources, tax-sharing, and financing for health, education and welfare, all indicated that federal-provincial relations had become highly "politicized" with negotiations primarily taking place between officials at the highest levels. These issues also created a new environment of intergovernmental competition and a proliferation of government expansion at both the federal and provincial levels. In Ottawa these developments included the establishment of the Treasury Board as a separate department, the creation of a number of new cabinet committees, the expansion of both the Privy Council Office and the Prime Minister's Office, and the creation of a Federal Provincial Relations Office in 1974. At the provincial level Quebec was the first to develop its bureaucracy in order to better manage its relations with Ottawa but by 1979 Alberta, Ontario, British Columbia, Newfoundland, and Saskatchewan all had their own departments responsible for intergovernmental relations.

A number of observers saw the proliferation of federal and provincial bureaucracies as a negative development. As early as 1979 Cairns argued that the very nature of Canadian federalism had contributed to the growth of government and intergovernmental competition. As Cairns has noted:

> Like lumbering mastodons in tireless competition these governments are possessed of an infinity of weapons capable of wreaking deliberate and inadvertent harm on each other, but incapable of delivering a knockout blow. ... Each government, in brief, strains to exaggerate somewhat, to attain and exercise the powers of a unitary state. This tendency is unavoidable as long as each views the conduct of the other government as threatening to its own pursuits.[88]

Smiley believed that Cairns's attack on executive federalism was premised on several inaccurate assumptions. First, Cairns asserted that governments perform as "unitary actors" and that conflict and fragmentation does not occur at either the federal or provincial levels. Richard Simeon, however, in his analysis of "federal-provincial diplomacy" related to constitutional reform and fiscal issues, found that the provinces and bureaucratic actors did not perform as unitary actors.[89] Smiley also challenged Cairns's assumption that federal-provincial interaction was essentially a "zero-sum game" in which neither side benefited from cooperation. Under this premise both levels of government simply want to preserve and expand their own autonomy. While this may be true in a number of instances it ignores the reality that cooperation between Ottawa and the provinces occurs every day. It also fails to account for the fact that many governments have now begun to decrease their bureaucracies, especially at the provincial level, due to the high economic costs involved in maintaining these institutions.

As important as executive federalism has become in terms of managing intergovernmental relations it is important to keep its impact in perspective. It is clear, for example, that executive federalism has not become a tool used exclusively by the federal government to control the provinces. At best it provides a forum for discussion in which Ottawa and the provinces share a relatively equal relationship. There are also those who view the often cooperative nature of executive federalism as a negative development in federal-provincial relations.[90] Albert Breton, for example, in his contribution to the Macdonald Report, suggested that "co-operation is not the most efficient principle of social organization and that it is less efficient than competition, especially because co-operation can easily degenerate into collusion, conspiracy, and connivance and that this is not necessarily good!"[91] Breton also believes that the unilateral action of competitive federalism is unfairly biased against the federal government. Constitutionally, and for the simple fact that the provinces can rarely come to a united position on issues, Ottawa moves

unilaterally on policy much more than its provincial counterparts. As such, Breton suggests that "the condemnation of unilateralism is also a denial that the division of powers between orders of government is essential to federalism. ... [Therefore], those who seek cooperative federalism and labour for its realization, seek and labour for a unitary state, disguised in the trappings of federalism, but from which competition would have been reduced to a minimum or even eliminated."[92]

Perhaps not surprisingly, some observers equate periods of competitive federalism with federal efforts to minimize decentralization. Specifically, an end to cooperative federalism is often marked by a series of policy initiatives designed to increase the power and legitimacy of the federal government. When Pierre Trudeau was re-elected in 1980 he was determined to reverse the relatively cooperative relationship that Ottawa and the provinces had enjoyed over the previous twenty years. According to Richard Simeon and Ian Robinson, Trudeau viewed cooperative federalism as cumbersome and lacking in democratic legitimacy. He also believed that decentralization and provincialism were as much a threat to the future of Canada as was Quebec nationalism. One of the first things Trudeau did was to pledge an end to First Ministers' Conferences. In his opinion, the meetings simply offered provincial premiers an opportunity to condemn federal policies on national television. In fact, Trudeau only held one conference on the national economy, in February 1982, but in the words of one observer "it was disaster."[93] Despite the Premiers' continued calls for more meetings on the economy the Liberal government refused to provide the provinces a forum in which to undermine what Ottawa saw as its re-established role as manager of the Canadian economy.

Nowhere was the Trudeau agenda more apparent than with Ottawa's new approach to fiscal policy. The relative harmony surrounding earlier EPF negotiations in 1977 was absent when the agreements came up for renewal in 1982. As already noted, the 1977 EPF agreements eliminated all federal conditions attached to existing shared costs programs. In an attempt to implement new national standards and regain control over the increasing deficit the Trudeau government sought to bind the provinces to a code of conduct in post-secondary education, health care, and other shared cost programs. Both levels of government entered into intense negotiations on the proposals but were unable to reach a workable compromise. Ottawa then decided unilaterally to enact new fiscal legislation for health and education in 1982. The following year the federal government further reduced funding for post-secondary education by linking transfers to new federal "six and five" guidelines. Medical care was also targeted and the Canada Health Act, which penalized provinces for implementing extra-billing and user fees, was enacted in December of 1983. The provinces strongly opposed the new programs but public opinion and government

opposition parties were both in favour of the changes. According to Simeon and Robinson, unlike "energy and the constitution, health care [and education] were not issues that divided the country regionally: this time the provinces were on their own."[94]

In terms of equalization payments the Trudeau government had two main objectives. One was to maintain resource revenues without making excessive payments to the provinces and the other was to try and devise a national formula for transfer payments that would not make Ontario eligible for federal funding. Initially, Ottawa wanted to maintain the existing representative tax system but instead of equalizing the national average the Liberal's 1981 Budget Paper proposed setting a "one province" standard. By choosing Ontario as the standard, however, the Trudeau government effectively eliminated Ontario from ever being eligible for equalization payments. As Ontario had limited resource revenues its inclusion in the equalization formula would also negate significant payments to the other provinces. Once again, Ottawa's proposals were condemned by the provinces, especially those with resource-based economies who would have had this money subtracted from their equalization entitlements. Ottawa finally did relent, following the "disastrous" economic conference in 1982, and an alternative plan was proposed basing the equalization standard on five provinces, Ontario, Quebec, British Columbia, Saskatchewan, and Manitoba. A federal "cushion" was also introduced to ensure that no province would undergo a drastic alteration in equalization payments as a result of poor economic conditions. While Ottawa was prepared to concede more to the provinces on equalization than the EPF it was still clear that the Trudeau government was determined to implement its own national economic agenda.

All of this changed, however, when Trudeau stepped down in 1984. During his four year return to office Trudeau had managed to reverse the direction in which Canadian federalism had evolved during the previous twenty-five years. The influence of some of these programs is still felt today. The introduction of the Charter of Rights and Freedoms, for example, has enhanced the status of individuals versus communities and given greater constitutional legitimacy to a number of non-territorial and/or "cross-cutting" cleavages. Although the Charter has not destroyed the communitarian ideals of provincialism and Quebec nationalism it has provided "politically disadvantaged groups, particularly those that are not territorially concentrated, a potentially powerful new institutional avenue for political mobilization."[95] In terms of federal-provincial fiscal relations, however, the Trudeau legacy is less apparent. While it is true that the Canada Health Act has endured the NEP, federal control over post-secondary education, and Liberal goals of a Canadian Economic Union, have not. Taken as a whole, "the efforts to increase the relative power of the federal government, and particularly its capacity unilaterally to control and manage the

economy, were only successful at the margin."[96] As Simeon and Robinson have noted, most Canadians were weary of Trudeau's conflictual approach to federal-provincial relations by the time of his departure in 1984. Most simply felt that intergovernmental mistrust and hostility made it difficult, if not impossible, to deal effectively with the economic problems still facing both levels of government.[97]

Given that Brian Mulroney was elected on the promise of "national reconciliation" it is not surprising that a more cooperative approach to federal-provincial relations emerged following his election in 1984. The current Liberal government of Jean Chretien has also promised to develop a more cooperative approach toward federal-provincial relations. This was particularly evident following last years Quebec referendum when Chretien announced his commitment to a more decentralized vision of Canadian federalism. Since the referendum, however, intergovernmental conflict on fiscal issues suggests that Ottawa has not completely abandoned its centralist economic strategy. In the case of healthcare, the federal government has fined the government of Alberta $1.26 million since November of 1995 for charging patients facility fees. Ottawa has argued that the Alberta policy is a violation of the Canada Health Act in that it sets up a "two-tier" system in which patients share the burden of a partially private health care system.[98] Ottawa has also recently withheld $47 million in transfer payments to British Columbia for implementing a minimum residency requirement for welfare recipients. The provincial government has maintained that it is unable to fund the flood of new welfare recipients who continue to arrive from other provinces. Ottawa has argued that these policies are a violation of mobility rights. As a result, the federal government has made it clear that B.C. programs will remain underfunded until all residency requirements have been removed.[99]

At the centre of these disputes is the Canada Health and Social Transfer (CHST) which replaced the CAP on April 1, 1996. Outlined in the Liberal budget of 1995, the CHST provides a lump sum payment to the provinces for health care and post-secondary education. In addition, Ottawa trimmed close to $2.5 billion from federal transfers by altering the existing formula that determines equalization payments for the provinces. Not surprisingly, the three wealthiest provinces, British Columbia, Alberta, and Ontario, all want to see the current formula changed to a per-capita system as they all receive less money than the other provinces for these programs. The federal government, however, is anxious to slash an additional $4.5 billion in 1996-97 and argues that there is simply not enough money to continue funding current provincial programs. All of these issues were discussed at a federal-provincial meeting on the economy on December 13, 1995. Some provinces suggested that Ottawa transfer personal-income tax points, which would give provincial governments the right to impose some of the income taxes now levied by the

federal government, or perhaps harmonize the goods and services tax with provincial retail taxes in order to raise more money for targeted programs. At the conclusion of the conference Ottawa and the provinces agreed to maintain a dialogue on these issues but to date nothing has been settled. What is clear, however, is that federal-provincial struggles continue to evolve, even in an era of apparent cooperative federalism.

Conclusion

From the above discussion it is clear that the autonomy of the federal government is increasingly limited by a wide range of domestic political and economic relationships that were in existence well before the implementation of the North American Free Trade Agreement. Many of these pressures continue to originate from the provinces, who remain as the main articulators of economic regionalism in Canada. At the same time, however, it would be wrong to dismiss the relevance of non-territorial variables in any contemporary discussion of federal-provincial relations. On the contrary, societal demands for better representation, accountability, and legitimacy, from federal institutions suggests that non-governmental actors continue to influence both the policy and structure of Canadian federalism.[100] It is also clear that societal pressures have had an impact on a number of economic issues currently at the forefront of Canadian federalism. Groups, for example, have mobilized to challenge Ottawa and the provinces over the redistribution of tax money for regional development programs, the on-going environmental exploitation of natural resources, and cuts to social programs. Although most of these actors continue to organize themselves on a regional or provincial basis a number of "cross-cutting" cleavages have also emerged to challenge the provinces as the main articulators of these interests. Therefore, although decentralization continues to manifest itself primarily in the form of territorial relations between Ottawa and the provinces, it is clear that other non-traditional domestic variables have become increasingly relevant in terms of further limiting federal autonomy.

As important as these issues are to the development of domestic policy they also provide an indication of the pressures faced by all states in the international system. Decentralization is not only particular to Canada. It is also related to the proliferation of interdependent linkages at the international level. As the intrusiveness of international economic and political relationships increases so does their impact, not only on domestic policy, but also in terms of the structure and institutions of government. Therefore, the empowerment of provinces and, to a lesser extent at the current time, non-governmental actors is the result of both international and domestic developments. The acknowledgment of the importance of these linkages, however, is largely absent from the literature on

Canadian federalism. Some observers do note the potential importance of international issues such as the General Agreement on Tariffs and Trade, the Canada-United States Free Trade Agreement, and the North American Free Trade Agreement, but these discussions are cursory at best and most contributions continue to focus on the "state-society" debate and/or the importance of class-based relations in Canada. These all provide meaningful insights into Canadian political and economic developments but, as with the international relations literature, there is a tendency to ignore the relationship that exists between domestic and international levels of analysis. It is essential to recognize that intrusive interdependence and the decentralization of Canadian federalism are both responsible for the empowerment of domestic actors, such as provincial governments, in policy areas formerly under central control. This is evident when examining the activity of the provinces at the international level, especially in terms of the North American Free Trade Agreement and the formulation of foreign economic policy within Canada.

Endnotes

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7. Ibid., p. 3.
8. Ibid.
9. In simple terms, the statist model assumes that the state controls the formulation of policy within a given country and is not open to outside influence. According to Kim Nossal in "Analyzing the Domestic Sources of Canadian Foreign Policy," *International Journal*, 39 (Winter, 1983-84), p. 8, the statist approach makes three basic assumptions about the relationship between the state and civil society. First, the state is not a monolith of interests. Within the state are a number of individuals, each with their own preferences and goals which will ultimately affect the formulation of policy. Therefore, the bureaucracy and intra-government bargaining are important aspects of statism. Second, the state, as a separate independent variable, will often have interests that diverge from the preferences of civil society. If the interests of the state and society differ the state will be autonomous and act in accordance with the pursuit of its own goals. Nossal's third and related characteristic assumes that the state has the power and resources necessary to prevail in any conflict situation. Other "statists", however, portray a more elaborate relationship between state and society. Eric Nordlinger, for example, in *The Autonomy of the Democratic State* (Cambridge: Harvard University press, 1981), p. 203, suggests that the state can maintain its autonomy by managing societal interests and preventing divergence. Unlike other statists, however, Nordlinger recognizes the existence of non-state variables and that societal support is a necessary condition for the state to implement its preferred policies. In his words it is necessary for the state "to receive some deference to its policies as a condition of effective action. In short, the state is autonomous if it can convince or coerce the public to support it."
10. William S. Livingston, *Federalism and Constitutional Change* (Oxford: Clarendon Press, 1956).
11. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, p. 7.
12. Carl Friedrich also suggested that federalism was not a static concept but rather a process in which a number of separate political communities were gradually integrated. For a detailed description of this argument please see Carl Friedrich, *Trends of Federalism in Theory and Practice* (New York: Praeger, 1968).
13. Michael Stein, "Federal States and Federal Societies," in Peter J. Meekison, ed., *Canadian Federalism: Myth or Reality?* 1st ed. (Toronto: Metheun, 1968), pp. 40-41.
14. Theda Skocpol, "Bringing the State Back In: Strategies of Analysis in Current Research," in Peter R. Evans, Dietrich Rueschemeyer and Theda Skocpol, eds., *Bringing the State Back In* (New York: Cambridge University Press, 1985, p. 4.
15. In his 1977 address to the Canadian Political Science Association Cairns critiqued the societal outlook of authors such as Livingston and Stein. Specifically, Cairns suggested that the "significant question, after all, is the survival of provincial governments, not of provincial societies, and it is not self-evident that the existence and support of the latter is necessary to the functioning and aggrandizement of the former. Their sources of

survival, renewal, and vitality may well lie within themselves and in their capacity to mould their environment in accordance with their own governmental purposes." For a sample of Cairns's earlier statist contributions, please see E.R. Black and A.C. Cairns, "A Different Perspective on Canadian Federalism," *Canadian Public Administration*, 9 (1966), pp. 27-45, and Alan C. Cairns, "The Governments and Societies of Canadian Federalism," *Canadian Journal of Political Science*, 10 (December 1977), p. 699.

16. Alan Cairns, "The Embedded State: State-Society Relations in Canada," in Keith Banting, ed., *State and Society: Canada in Comparative Perspective: Volume 31 of the Royal Commission on the Economic Union and Development Prospects for Canada*, (Toronto: University of Toronto Press, 1986), pp. 53-86.

17. Ibid., p. 54.

18. Ibid., p. 56.

19. For other perspectives on social cleavages in Canada, please see Roger Gibbins, *Conflict and Unity* (Metheun: Toronto, 1985), and D. Bell and L. Tepperman, *The Roots of Disunity: A Look at Canadian Political Culture* (Toronto: McClelland and Stewart, 1979).

20. M.J.C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1969), p. 314.

21. Marxists, for example, have given considerable attention to the nature of the "state" in North America during the last twenty years. Despite these efforts there have been relatively few attempts to confront the question of the state in the light of the concrete socio-economic *and* political *and* cultural realities of actual capitalist societies most agree that the capitalist state is related to social class relations and as such this implies the domination of one group over another. There is a difference, however, between how "instrumental" Marxists and "structural" Marxists view the state. The instrumental approach essentially views those in a position of power as being a section of the dominant class. Therefore, as those in power often have intimate links with the corporate sector and the property owning class it is not difficult to understand why government policy often reflects these interests. Structural Marxists, on the other hand, do not view the state as simply an instrument of the dominant class. Structuralists attempt to explain why the state often formulates policy that is contrary to the general interests of the upper classes of society. The key to the structural argument is that the capitalist class in society is not a monolith but, instead, is sharply divided amongst a number of different economic perspectives. The state responds to these competing interests by determining the most efficient means in which to ensure the long term capitalist system, often ignoring the short term interests of these divergent views. Therefore, policies that would appear to be contrary to the interests of the capitalist class are adopted by the state, not only to give the system legitimacy in the eyes of other classes, but ultimately to avert the collapse of the system through disaffection or revolution.

22. Smiley, *The Federal Condition in Canada*, p. 9.

23. Many observers, however, remain extremely critical of class-based approaches to Canadian federalism. Smiley's critique of neo-Marxism, for example, centers on a number of inconsistencies in its structural-deterministic approach. First of all, Smiley questions the assumption that there is unity amongst the "dominant" class in Canada or in any other state. Specifically, Smiley asserts that, despite what structural Marxists may imply, elite actors within individual capitalist states will develop goals and policies that are inconsistent with the interests of the dominant class as a whole and these policies are in no way related to avoiding disaffection or revolution. Smiley also believes that a considerable amount of democratic politics has nothing to do with Marxist assumptions of domination and subordination. Neo-Marxists, for example, ignore the impact of competitive political parties on the "politics" of the state, as well as failing to consider the different consequences of states being unitary, federal, parliamentary or congressional.

24. Black and Cairns, "A Different Perspective on Canadian Federalism."

25. Harold Innis, *Essays in Canadian Economic History* (Toronto: University of Toronto Press, 1956).

26. Despite the importance Innis placed on the provinces he noted the ongoing relevance of the federal government. Specifically, in his discussion of eastern cod resources, Innis suggested that Ottawa was given federal control over fisheries in large part to counter fears of American intrusions into Canadian waters.
27. N.H. Lithwick, "Is Federalism Good for Regionalism?" in Garth Stevenson, ed., *Federalism in Canada: Selected Readings* (Toronto: McClelland and Stewart, 1989), p. 230.
28. Ibid., pp. 230-231.
29. Some examples of the early use of disallowance and reservation are noted in A. Forsey, "Disallowance of Provincial Acts, Reservation of Provincial Bills, and Refusal of Assent by Lieutenant-Governors Since 1867," *Canadian Journal of Economics and Political Science*, 4 (1938), as cited in F.R. Scott, "Centralization and Decentralization in Canadian Federalism," in Stevenson, ed., *Federalism in Canada: Selected Readings*, pp. 52-80.
30. Scott notes sections 24, 29, 92 (2), and 118 (amended), as evidence of federal control listed in the BNA Act.
31. Garth Stevenson, "The Social and Economic Background of Canadian Federalism," in Stevenson, ed., *Federalism in Canada: Selected Readings*, p. 186.
32. Scott, Centralization and Decentralization in Canadian Federalism," p. 59.
33. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity* , p. 178.
34. Ibid., p. 181.
35. Ibid., p. 182.
36. Paul A.R. Hobson, "Current Issues in Federal-Provincial Fiscal Relations," in Ronald L. Watts and Douglas M. Brown, eds., *Canada, The State of the Federation* (Kingston, Ontario: Queen's University, Institute of Intergovernmental Relations, 1993), p. 180.
37. Ibid., pp. 180-181.
38. Paul Barker, "The Development of Major Shared-Cost Programs in Canada," in R.D. Olling and M.W. Westmacott, eds., *Perspectives on Canadian Federalism* (Scarborough, Ontario: Prentice-Hall Canada, 1988), p. 196.
39. For a more detailed discussion of proposals designed to refinance the EPF, please see Hobson, "Current Issues in Federal-Provincial Fiscal Relations," pp. 181-184.
40. Figures taken from Hobson, "Current Issues in Federal-Provincial Fiscal Relations," p. 184.
41. Michael Hart, *Trade - Why Bother?* (Ottawa: The Centre For Trade Policy and Law, 1992), p. 11.
42. For an example of a critique of north-south economic integration in North America, please see Daniel Drache and Meric S. Gertler, eds., *The New Era of Global Competition - State Policy and Market Power* (Montreal and Kingston: McGill-Queen's University Press, 1991).
43. Douglas M. Brown and Murray G. Smith, "Introduction," in Douglas M. Brown and Murray G. Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* (Kingston, Ontario: Queen's University, Institute of Intergovernmental Relations, 1991), p. 14.
44. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, p. 189.
45. Ibid., p. 190.
46. Ibid., p. 191.
47. Ibid.
48. Ibid., p. 192.
49. In one of the earliest federal-provincial disputes, the British Columbia government of W.A.C. Bennett ignored an international agreement which called for the partial diversion of the Columbia River into the United States. In addition, Bennett also expropriated the B.C. Electric Company. As a result, it was impossible for either the Diefenbaker or Pearson governments to implement the Columbia River Treaty until Ottawa agreed to divert

all power from the Columbia to the United States in exchange for financial compensation for the province (in the end this money barely covered the expense of shipping the energy to the Americans). Not all disagreements over energy resources, however, involve the federal government. Quebec and Newfoundland, for example, have long disagreed about the power generated by Churchill Falls. Specifically, Quebec has refused to allow Newfoundland to build transmission lines across its territory to sell electricity to the United States. Newfoundland has had no other option but to sell its power to Quebec at a reduced rate, which they in turn have sold to the Americans. As with Bennett in British Columbia, however, rising inflation has made these agreements economically obsolete.

50. Craig McInnes, "Autopsy Sure to Follow the Killing of Kemano," *Globe and Mail* January 30, 1995, p. A-3.

51. For a more detailed discussion of the B.C. Utilities Commission report, please see Mark Hume, "Options, Not Answers," *Vancouver Sun* January 24, 1995, p. A-13.

52. Keith Baldrey, Peter O'Neil and Rod Nutt, "B.C., Ottawa Bicker Over Alcan Payout," *Vancouver Sun* January 24, 1995, p. A-1.

53. Harcourt also suggested that the former British Columbia Social Credit government was not aware of existing federal reports noting the harmful impact of reduced water flows when it signed the 1987 agreement containing the clause exempting Alcan from future environmental studies.

54. Ross Howard, "B.C. Liable For Dam Compensation, Ottawa Says," *Globe and Mail* January 25, 1995, p. A-3.

55. Norman Ruff, "B.C. and Canadian Federalism," in J. Terence Morley et al., eds., *The Reins of Power: Governing British Columbia* (Vancouver and Toronto: Douglas and McIntyre, 1983), p. 302.

56. R.M. Burns, "British Columbia: Perspectives of a Split Personality," in Richard Simeon, ed., *Must Canada Fail?* (Montreal and Kingston: McGill-Queen's University Press, 1977), p. 71. The Kemano dispute suggests that the current NDP government in British Columbia shares a number of similarities with its Social Credit predecessors in terms of intergovernmental relations. Mike Harcourt had initially hoped to take joint action with the federal government on Alcan following the Utilities Commission report but not surprisingly Ottawa had little interest in getting involved. Ultimately, the provincial government decided that the political consequences of failing to act on the report outweighed the need for federal involvement. In other words, Harcourt made a political decision to appease provincial environmentalists at the expense of economic development, as he also did in the Clayoquot Sound and the Tatshenshini Basin, and looked to score further "political points" in the ensuing battle with Ottawa over the issue of compensation for Kemano. Although it is fair to say that British Columbia is less concerned with the issue of provincial autonomy than in the past it is also clear that the province will continue to take advantage of its "isolated" role in Canadian federalism when dealing with specific policy objectives. As Donald Smiley has succinctly noted "British Columbia is a member of Confederation but a somewhat detached member."

57. In fact, the Diefenbaker government went as far as reserving the entire Canadian market west of Ottawa for Alberta oil and gas. During this time Quebec and the Maritimes continued to rely on imported oil and the federal government exported any surplus oil and gas from the western market to the United States.

58. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, p. 197. Ottawa, however, understood that these controls did not come without political costs. The economy and population of Alberta were continuing to increase as business and individual Canadians were attracted to the provinces low level of taxation. Public expenditures had also continued to grow and the provincial government accumulated a Heritage Savings Trust Fund that reached close to $10 billion by the beginning of the 1980s. As the 1970s drew to a close the federal government was faced with a difficult decision. Would it continue to provide reduced prices for the domestic market or would it eliminate its costly and cumbersome series of subsidies to the oil and gas industry? The revolution in Iran in

1978 and 1979, however, limited Ottawa's options and the federal government was forced to continue its domestic subsidization programs. Although these measures remained unpopular in Alberta the rest of the country continued to enjoy comparably lower prices than those in the global economy.

59. Ibid., pp. 198-99.

60. Smiley, *The Federal Condition in Canada*, p. 158. Prairie alienation has a long historical legacy. Prior to the prairie provinces gaining control over their natural resources in 1930 the federal government, namely the Department of the Interior, set regional settlement and development patterns. Perhaps not surprisingly there have been numerous "revolts" from the prairie provinces in regards to their perceived subordinate economic role in the Canadian federal arrangement. From 1905 to the 1920s the major form of opposition came from farmers movements. These organizations laid the foundation for the provincial Social Credit and Co-operative Commonwealth Federation (CCF) parties that dominated prairie politics until the post-war period.

61. Please see John Richards and Larry Pratt, *Prairie Capitalism: Power and Influence in the New West* (Toronto: McClelland and Stewart, 1979), pp. 111-171.

62. Smiley, *The Federal Condition in Canada*, p. 162.

63. Ibid., p. 161.

64. John Whalley, "Induced Distortions of Interprovincial Activity: An Overview of Issues," in Michael J. Trebilcock et al, eds., *Federalism and the Canadian Economic Union* (Toronto: University of Toronto Press, 1983), p. 167.

65. "Economic Union Elusive Still," Editorial, *Globe and Mail* July 18, 1994, p. A-16.

66. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, p. 214.

67. Ibid., p. 215.

68. Smiley, *The Federal Condition in Canada*, p. 101.

69. John Meisel, for example, has even questioned the ongoing relevance of parties. Meisel has argued that several factors, including the impact of the electronic media, the shift in power from elected officials to appointed bureaucrats, the growing influence of interest groups on public policy, and federal-provincial diplomacy have all contributed to what he refers to as the "relative decline of all parties in Canada." For more information on Meisel's thesis, please see John Meisel, "The Decline of Party in Canada," in Hugh G. Thorburn, ed., *Party Politics in Canada*, 6th ed. (Scarborough, Ontario: Prentice-Hall Canada, 1991), pp. 178-202.

70. Harold D. Clarke, Jane Jensen, Lawrence Le Duc and Jon H. Pammett, *Absent Mandate: Interpreting Change in Canadian Elections*, 1st ed. (Toronto: Gage Educational Publishing Company, 1984), p. 70.

71. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, p. 218.

72. Reginald Whitaker, *The Government Party: Organizing and Financing the Liberal Party of Canada, 1930-1958* (Toronto: University of Toronto Press, 1977).

73. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, p. 218.

74. Ibid., p. 219.

75. For more information on the role of political parties in Canada, please see Hugh G. Thorburn, ed., *Party Politics in Canada* and Alain G. Gagnon and A. Brian Tanguay, eds., *Canadian Parties in Transition: Discourse, Organization, Representation* (Scarborough, Ontario: Nelson, 1989).

76. Smiley, *The Federal Condition in Canada*, p. 48.

77. Bora Laskin was critical of the JCPC in "'Peace, Order and Good Government' Re-Examined," *The Canadian Bar Review*, 25 (1947).

78. Smiley, *The Federal Condition in Canada*, p. 49.

79. Article 2(1) of the Charter of Rights and Freedoms states that "Anyone whose rights and freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

80. Smiley, *The Federal Condition in Canada*, p. 53.
81. Ibid.
82. P.W. Hogg, "Is the Supreme Court of Canada Biased in Constitutional Cases?" *Canadian Bar Review*, 57 (December, 1979), pp. 721-739.
83. Paul Weiler, *In the Last Resort: A Critical Study of the Supreme Court of Canada* (Toronto: Carswell, 1974), especially Chapter 6.
84. D.V. Smiley, *Canada in Question: Federalism in the Eighties*, 3rd ed. (Toronto: McGraw-Hill Ryerson, 1980), p. 91.
85. Smiley, *The Federal Condition in Canada*, p. 85.
86. Ibid. Smiley cites Gordon Robertson, "The Role of Interministerial Conferences in the Decision-Making Process," in Richard Simeon, ed., *Confrontation and Collaboration - Intergovernmental Relations in Canada Today* (Toronto: Institute of Public Administration of Canada, 1979), pp. 78-88.
87. Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity* , p. 225.
88. Alan C. Cairns, "The Other Crisis of Canadian Federalism," *Canadian Public Administration*, 22 (Summer, 1979), pp. 191-192.
89. Richard Simeon, *Federal-Provincial Diplomacy* (Toronto: University of Toronto Press, 1972). The bureaucratic role of states is also explored in considerable detail in Graham Allison, *Essence of Decision* (Boston: Little, Brown, 1971).
90. Not everyone would agree with this conclusion. In *Unfulfilled Union* Stevenson recounts an episode when the former Prime Minister of Nigeria, Sir Abubaker Balewa, commented to Harold Wilson that, "you are fortunate. One thing only I wish for you, that you never have to become Prime Minister of a federal and divided country." Stevenson also notes that considering "he was assassinated four days after making this remark, and since his death proved to be the opening of the Nigerian civil war, Balewa's pessimism was probably justified." In Canada's case, however, intergovernmental competition is perceived at worst to lead to ineffective government.
91. Albert Breton, "The Theory of Competitive Federalism," in Stevenson, ed., *Federalism in Canada: Selected Readings*, p. 464. At the centre of Breton's critique is the "elite accommodation" of executive federalism. Although Breton does not dismiss the relevance of executive federalism he does think that by moving debate into executive and bureaucratic corridors it promotes "secret deals" and effectively eliminates public access to these issues.
92. Ibid., p. 466. Breton suggests that "intrastate federalism" is a possible alternative for resolving the shortcomings of Canadian federalism. Specifically, intrastate federalism addresses issues of representation and includes replacing the existing Senate with a second chamber of elected officials or those chosen by the provinces, reforming the electoral system to better reflect regional representation in the House of Commons, weakening party discipline, and altering the structures of Cabinet and the federal bureaucracy. Asymmetrical federalism has also been discussed as an alternative to the current Canadian federal arrangement. In sum, asymmetrical federalism can be defined as a series of multi-level political systems in which units (such as provinces) take on greater powers or broader policy responsibilities. Critics of these proposals, however, argue that profound change is unnecessary as the status quo has provided peace and stability for well over a century and that these reforms all require significant constitutional change. Following the failure of Meech Lake and the Charlottetown Accord there is a growing realization that constitutional renewal of any kind is unlikely to take the form of a formal amendment. Although other reforms could evolve through convention and may not require a "mega-amendment" it is clear that any significant changes will be subject to the formal amending formula outlined in the Constitution Act, 1982. For further information regarding regional representation and intrastate federalism, please see Donald V. Smiley and Ronald L. Watts, *Intrastate Federalism in Canada: Volume 39 of the Royal Commission on the Economic Union and Development Prospects for Canada* (Toronto: University of Toronto Press, 1985), Roger Gibbins, *Regionalism: Territorial Politics in Canada and the United States* (Toronto:

Butterworth, 1982), and J. Stefan Dupre, "Reflections on the Workability of Executive Federalism," in Richard Simeon, ed., *Intergovernmental Relations: Volume 63 of the Royal Commission on the Economic Union and Development Prospects for Canada* (Toronto: University of Toronto Press, 1985). For an overview of the asymmetrical option, please see Philip Resnick, "Toward a Multinational Federalism: Asymmetrical and Confederal Options," in F. Leslie Seidle, ed., *Seeking a New Canadian Partnership: Asymmetrical and Confederal Options* (Toronto: The Institute on Public Policy, 1994), pp. 71-90. For more information on the amending formula, please see Peter Meekison, "The Amending Formula," in Olling and Westmacott, *Perspectives on Canadian Federalism*, pp. 61-76.

93. Richard Simeon and Ian Robinson, *State, Society, and the Development of Canadian Federalism: Volume 71 of the Royal Commission on the Economic Union and Development Prospects for Canada*, (Toronto: University of Toronto Press, 1990), p. 291.

94. Ibid., p. 294.

95. Ibid., p. 298.

96. Ibid., pp. 298-99.

97. For more information on federal-provincial relations during the Trudeau and Mulroney governments, please see David Milne, *Tug of War: Ottawa and the Provinces under Trudeau and Mulroney* (Toronto: James Lorimer and Company, 1986).

98. For more information on Alberta's conflict with the federal government over facility fees and the Canada Health Act, please see Tom Arnold, "Clinics Fine 'Irritates' McClellan: Feds' Levy Nears $1.26 Million," *Edmonton Journal* January 16, 1996, p. A-1.

99. For more information on residency requirements for welfare recipients in British Columbia, please see Edward Greenspon, "B.C. Facing Federal Financial Penalty: Ottawa to Withhold Transfer Payments Over Welfare Residency Requirement," *Globe and Mail* December 5, 1995, p. A-1, and Edward Greenspon, "B.C. Fails to Sway Ottawa on Welfare: Federal Funds Not Handed Over," *Globe and Mail* December 8, 1995, p. A-1. For a more detailed discussion of the CHST, please see Edward Greenspon, "Health, Social Transfer May be Unraveling," *Globe and Mail* December 13, 1995, p. A-4, and Alan Freeman and Edward Greenspon, "Provinces Squabble Over Funding: Divisions Widen Between Rich and Poor Regions as Finance Ministers Tackle Equalization," *Globe and Mail* December 14, 1995, p. A-1.

100. It should also be acknowledged that not all cleavages in Canadian society choose to affiliate themselves with the state. Some aboriginal and women's groups, to cite but two examples, reject the institutions of federalism for the simple fact that they are perceived to be directly responsible for their marginalization in Canadian society.

CHAPTER 3

Intrusive Interdependence and The North American Free Trade Agreement

Introduction

Although support for a formal economic agreement between Canada and the United States dates back to the turn of the century the decision to enter into bilateral negotiations had little to do with any historic vision of continental free trade. Instead, the Canada-United States Free Trade Agreement (FTA), and the subsequent North American Free Trade Agreement (NAFTA), were both directly related to a mix of domestic factors and the increasing intrusiveness of the international system. As a result, it is important to understand how international trade has evolved and how economic regimes designed to manage these transactions, such as the General Agreement on Tariffs and Trade (GATT), have changed in response to these pressures. In an attempt to accommodate these changes Canada, the United States, and Mexico, saw a need to address a number of outstanding trade related issues that included rules of origin, customs administration, technical standards, anti-dumping and countervailing duties, land transportation, trade in services, investment, financial services, intellectual property rights, and dispute settlement. In addition, all three countries saw these negotiations as an opportunity to reinforce a number of sector related issues including agriculture, the automobile industry, energy, government procurement, and textiles. Many of these concerns were important before the implementation of continental free trade, but the NAFTA addresses them in a more comprehensive manner

than ever before. In addition, despite the fact that some observers believe the NAFTA is simply an extension of the FTA there are a number of areas of the new agreement that are much more intrusive than its predecessor. In fact, the following chapter will focus exclusively on the provisions of the agreement that further limit the ability of the federal government to regulate the national economy. As a policy choice that reflects Ottawa's new reliance on market forces the NAFTA has potentially profound implications for trade and investment relations in North America. The loss of autonomy that accompanies membership also has a direct impact on the domestic policy process of each country. In Canada, this is especially evident in the increasing limitations placed on Ottawa in the formulation of Canadian foreign economic policy.

Interdependence and International Trade

In order to understand the significance of the North American Free Trade Agreement and its side deals on labour and the environment it is first necessary to acknowledge the relationship between trade and interdependence in the global political economy. What is interdependence? In simple terms, "economic interdependence can be thought of as a situation whereby economic decisions or events taking place in one country influence those occurring in other countries."[1] As interdependence increases so does the sensitivity of domestic economies to developments in the international system. The impact of increased interdependence and the emergence of more "open" national economies, however, varies considerably amongst states. In particular, "smaller states tend to be more affected - and constrained in their policy choices - by global economic interdependence than are larger states or those that deliberately choose to limit their transactions with the outside world."[2] Most observers link the increase of interdependence to the rapid growth of international trade following the Second World War. In the period between 1948 and 1973 the volume of world trade increased more than six times with annual rates rising by an average of seven per cent. Despite economic problems in the 1970s, which included the collapse of the Bretton Woods fixed exchange rate and oil shortages that occurred at both the beginning and end of the decade, trade relations continued to expand. As a percentage of Gross National Product (GNP) trade in industrialized countries more than doubled during the past two decades to reach 20 per cent. Manufactured goods have outperformed agricultural and mining products and trade in services have increased to the point where these non-commodity-based exchanges now account for close to one-fifth of all world trade. Trade flows between countries have also been significantly altered. In the fifteen year period between 1970 and 1985, for example, the "traditionally poor" countries of the South increased trade in manufactured goods to the industrialized countries of the North from 22

to 55 per cent. As a result, "we now all have a greater stake in the health of the global economy. ... What we do affects others, while what they do affects our prosperity to an increasing extent. Equally important, growing interdependence limits the margins of maneuverability of all countries."[3]

While it is necessary to acknowledge the significance of expanding interdependence it is also important to recognize the changing nature of trade in this environment. Put simply, "trade policy" as it was understood in the post-war period is no longer relevant. Although trade in commodities was the primary source of economic interaction following World War Two its importance began to diminish by the 1970s. Not only did trade in services begin to eclipse imports and exports of resources and manufactured goods but international transactions became increasingly dominated by multinational enterprises. These conglomerates now conduct close to half of all global trade and almost 30 per cent of multinational trade takes place on an intra-firm basis. International investment and global financial markets have also become increasingly more important. In fact, it is now generally accepted that international financial flows may be as high as forty times greater than trade in goods and services. Further, as financial markets have increased in significance so has lending and borrowing across national borders. The resulting integration of financial linkages, consisting mainly of portfolio capital, investments in securities and government bonds, tends to be "volatile, responding quickly to movements in interest rates, exchange rates, inflation rates, or perceptions of risks."[4] Direct investment by international actors, which involves investment in domestic wholly or partially owned subsidiaries based on judgments of worker training, available infrastructure, and the least cost combination of inputs, is also on the rise. "During the past twenty years the global stock of international direct investment abroad has grown from $112 billion (U.S.) in 1967 to $1 trillion (U.S.) in 1987. ... Since 1980, foreign direct investment (FDI) flows have [also] grown four times faster than world trade."[5] As one observer has noted:

> This rate of growth underlies the global integration of markets and the linkage between trade flows and investment. Foreign investment is now the key to penetrating world markets and is a vital vehicle for the transfer of technology, of skills opportunities and of managerial expertise. However, a world market for investment means greater competition among countries for investment funds and the increasing importance of a positive domestic investment climate. ... Companies make global business decisions to restructure and rationalize their production based on costs, the nature of the labour force and the local environment. They must also look at the development of strategic alliances and joint ventures across borders that will secure access to new markets they need to survive and grow.[6]

Roy McLaren, Canada's former Minister of International Trade, summed up the reality of contemporary "trade" in a speech given in Davos, Switzerland. It is clear, he said, that "the rules of the international game are changing dramatically. Increasingly, it is more accurate to speak not of trade policy as such, but of international economic policy."[7]

These developments have had a major impact not only on international economic regimes but also on the internal policy process of most states. Although the following chapter will focus on the increasing intrusiveness of agreements such as the NAFTA it is also important to acknowledge the fact that trade negotiations are no longer simply another aspect of traditional inter-state relations. These negotiations now require an unprecedented degree of participation at the internal level that attempts to accommodate the legitimate interests of both international and domestic actors. In order to understand these developments it is helpful to examine the evolution of international economic regimes in response to the increasing pressures of globalization. The primary international trade regime that emerged in the post-war period was the General Agreement on Tariffs and Trade (GATT). The GATT, which was formed as a means of avoiding the protectionist trade policies that were prevalent prior to the Second World War, became the main institution for negotiations on trade barrier issues. The GATT was founded on the key principles of tariff reduction and Most Favoured Nation status (MFN). In the immediate post-war period states relied extensively on tariffs to discriminate against goods entering a given country. Despite their protectionist effects, the GATT encouraged states to adopt tariff-based systems as they were the most transparent and reductions could be more easily negotiated. MFN status, on the other hand, ensured that any benefits from negotiations between two parties to the GATT would automatically be extended to other members. This was designed to assist smaller countries in the international system that did not have sufficient leverage to negotiate concessions from other states on their own. To a large extent, "the remainder of the GATT provisions were designed to ensure the integrity of members' tariff concessions and thus guard against the possibility that countries would develop barriers to trade other than those recognized by the GATT and operating within agreed rules."[8] The International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD) were also founded at this time to provide rules to "fix" exchange rates and liberalize restrictions covering account transactions.

The GATT held several rounds of negotiations in the ensuing years that contributed to a drastic reduction in the tariffs of most states. The progress made on the reduction of tariff barriers was considerable. In fact, by the conclusion of the Tokyo Round in 1979 tariff duties on manufactured imports in most industrial countries, including the United States, Japan, and the European Community, fell to as low as 5 to 7 per cent. Slightly

higher levels were maintained for developed countries such as Canada, Australia, and Spain. It became clear during the Tokyo Round, however, that the GATT was encountering new challenges related to protectionist non-tariff barriers (NTBs). Several new multilateral agreements, known as "codes", designed to deal with rising protectionism related to government procurement, subsidies, countervailing duties, dumping and anti-dumping duties, technical barriers to trade, and import licensing procedures, were developed during the Tokyo Round. It was soon evident, however, that states were not complying with these measures. The GATT may have been successful in reducing tariff barriers but states were now using other mechanisms (NTBs) to restrict trade in specific sectors.[9]

The difficulty facing the GATT on the issue of non-tariff barriers was that tariffs were much easier to negotiate than NTBs. Not only are tariffs easily quantifiable and defined border measures but they are also comparable across countries and product categories. Further, as tariffs are imposed by national governments to restrict border access for specific goods they have not traditionally raised politically sensitive questions related to national sovereignty. While non-tariff barriers may produce the same result as visible tariffs, namely the restriction of trade, they are often linked to subsidy programs, government procurement policies, and national health, safety and technical standards that are primarily domestic rather than international in character. Moreover, "restricting the use of non-tariff measures and harmonizing national standards and practices through international negotiations raise special difficulties because international regulation in these areas almost always clash with the demonstrated preference of governments to preserve (and indeed enhance) their ability to make national choices in social and economic policy rather than have these choices dictated by the terms of international organizations and agreements."[10] As one Canadian official noted, "jurisdictions and policy areas that have long been considered to be quintessentially domestic are now increasingly subject to international negotiation and rule-making. Both government and the private sector must now deal not just with tariffs, and export subsidy practices, but also with investment policy, intellectual property, competition policy, and research and development. Even social programs, previously the sole preserve of national governments, are coming under the trade negotiators microscope or, at the very least, are being reshaped in response to the inexorable pressures of the international marketplace."[11] As a result, these developments have forced governments to attempt to include a number of non-traditional actors into the domestic economic policy process.

The 1988 Canada-United States Free Trade Agreement (FTA) provides further evidence of the intrusiveness of international economic regimes. The FTA is important not

only for what is included in the final text but also for the specific exclusions that are in the agreement. Although exclusions for domestic law are nothing new in international trade agreements the FTA is significant in terms of the provincial and regional interests that were negotiated, namely investment, technical standards, financial services, and government procurement. Chapter 6, for example, exempts provinces from the obligation to alter technical standards and procedures which create unnecessary obstacles to trade. Chapter 7 preserves provincial marketing boards and farm income stabilization and price support programs. Chapter 12, in addition to preserving necessary export controls to maintain domestic law, also excludes key regional sectoral interests such as the export of logs and unprocessed east coast fish, and the internal sale and distribution of beer (although preserving each states rights pursuant to the GATT). Chapter 13 excludes government procurement and chapter 16, which provides for free trade in investment, only applies to future changes in laws. Finally, financial services, covered in chapter 17, do not apply to any provincial measures.

The FTA while protecting a number of areas of provincial jurisdiction, also includes several provisions that have an impact on the scope of the regulatory authority of the provinces. During negotiations provincial governments were concerned that laws regarding the upgrading or processing of natural resources prior to export could be challenged by the United States as an import-export restriction. A number of officials were also worried that resource management strategies could be targeted as unfair subsidies. There was also considerable speculation that the establishment of new public insurance programs by the provinces would be subject to compensation of privately owned companies and any provincial tax breaks, grants and other incentives available only to Canadian owned businesses would be the target of American challenges on the grounds they were discriminatory and unjustifiable. Professor Andrew Petter, then an Associate Professor, Faculty of Law, at the University of Victoria, noted in his testimony to the Standing Senate Committee on Foreign Affairs in May of 1988, that the FTA significantly intruded into a number of areas of provincial jurisdiction. Professor Petter stated at the time that the FTA "subjects the provinces to an enforcement mechanism that is even more stringent than the one applying to the federal government; and it will produce significant changes in the nature of federal-provincial relations." Further, Petter cautioned that "once the Agreement is in place, any provincial initiative that could be construed as violating its terms will attract scrutiny, pressure and possibly retaliation from both American and federal authorities."[12] In the years following the negotiation of the FTA a number of developments have substantiated Petter's earlier concerns. Provincial resource management initiatives have become a favorite target of American trade challenges and

federal-provincial relations are increasingly influenced by economic developments in the United States. As Petter suggests, although the FTA was designed to reinforce an already strong bilateral trade relationship it was also as intrusive, if not more so, than previous GATT commitments.

Why NAFTA? Why Now?

Before examining the content of the NAFTA in more detail it is worth considering why Canada was interested in pursuing a formal trade agreement with the United States and Mexico. American motivation included political reasons such as illegal immigration and drug enforcement. Canadian concerns, alternatively, were almost exclusively economic. Specifically, Ottawa was interested in the potential benefits of an economic union larger than the European Community that included a population of over 360 million people with a total gross domestic product of close to $7.5 trillion. In the past, however, Mexico had expressed very little interest in developing closer economic ties with its North American neighbours. In fact, since "the Mexican Revolution in the 1910s, the drafting of one of the Western Hemisphere's most radical constitutions in 1917, and the nationalization of most foreign-owned oil properties in 1938, and the subsequent creation of the state-owned oil corporation, PEMEX [Petroleos Mexicanos], Mexico seemed committed to an economic model that mixed state capitalism and state socialism."[13] Mexico also refused to join the GATT and pursued an economic policy that essentially ignored the power and opportunity of the American market. While Mexico and the United States did extend Most Favoured Nation (MFN) "treatment to each other, there was no treaty basis for this nor did it matter much: throughout most of the postwar years, foreign trade constituted less than ten per cent of Mexico's GDP."[14] In direct contrast to Canada's commitment to liberalized trade and multilateralism the Mexican government pursued a policy of economic nationalism for most of the twentieth century.

In order to understand the political and economic climate that allowed for the successful negotiation of the NAFTA it is important to recognize the changes that were occurring within Mexico during the 1970s and early 1980s. Politically, the administrations of Luis Echevarria Alvarez (1971-76) and Jose Lopez Portillo (1977-82) began to initiate a more open foreign policy even becoming an active voice in the Group of 77, an association of largely anti-American developing countries seeking the initiation of a New International Economic Order. By the beginning of the 1980s Mexico's economic situation had also deteriorated rapidly. Faced with a world wide depression and falling oil prices the Mexican government was suddenly faced with a crushing foreign debt of more than $100 billion. On August 12, 1982, in a move that sparked the Third World debt crisis, the Mexican

government announced that it was no longer able to pay interest on its outstanding international loans. In the years following 1982, "economic growth stagnated, while the government deficit peaked at a staggering 17 per cent of gross domestic product, about four times Canada's high rate. Repeated devaluations of the peso cut real income levels in half [and] hyperinflation took hold at annual rates of more than 100 per cent."[15]

What followed was a realization by Mexico that it had to alter its state-driven economy radically to earn the foreign exchange required to service its debt and modernize its economic infrastructure. The strategy adopted by the Mexican government was to reform its domestic trade regime and re-apply for GATT membership.[16] The first steps were initiated as early as 1983 and included reduced customs tariffs, increased duties to provide clearer barriers for potential future GATT negotiations, and simplified import/export tariffs. As the Mexican economy became more competitive the number of imports subject to quantitative restrictions were further reduced and the tariff structure for goods entering the country was also modified. In the period from 1983 to 1985 almost sixty per cent of existing tariffs were liberated from the import permit which meant that the total imports subject to this particular form of discrimination were reduced from 83.5 per cent to 37.5 per cent. In 1986 and 1987 the modification and removal of import tariffs continued until all tariff levels other than zero were finally "reduced by fifty per cent, creating a new structure with only five tariffs: 0, 5, 10, 15 and 20 per cent. As a result, duty measures decreased from 19 to 10.4 per cent and a six-point fall in the dispersion occurred, reaching a level of 7.1 per cent by the end of 1988."[17] By 1990 only three per cent of import tariffs were subject to quantitative restrictions and the average duty was reduced to less than ten per cent. As Juan Jose Moreno Sada, a member of Mexico's Chamber of Deputies, announced in 1991 "this is how, in very few years, the Mexican economy went from being one of the most closed to one of the most open in the world."[18]

These developments set the stage for closer ties between Mexico and the United States. Prior to the implementation of Mexico's restructuring program trade with the United States was dominated by the oil industry. At one point, just prior to the collapse of the global oil market in 1982, oil consisted of 73.6 per cent of all Mexican exports to the Americans equaling $15.6 billion (U.S.). Following 1982, however, it became clear that Mexico could no longer rely on oil as a means of earning the foreign exchange it needed to service its growing international debt. The Mexican government responded by emphasizing diversification which resulted in increased exports to the United States in machinery, transport equipment, and other manufactured goods.[19] American investment also increased as Mexico continued to open its borders to liberalized trade. "In addition to the usual array of U.S. corporate giants whose products now command worldwide

recognition (Coca-Cola, IBM, Dupont, Ford and GM), smaller and lesser known companies invested in... conventional branch plants. In 1988 some 8,420 foreign companies operated in Mexico. By the end of 1989, U.S. direct foreign investment stood at nearly $17 billion (U.S.) representing some 63% of all FDI in Mexico."[20] As one senior Canadian official noted, a number of American companies have managed to develop "a great deal of brand name identification and loyalty. From a marketing standpoint, they simply wanted to build on the economic success they already established."[21] This investment also prompted a number of Mexican companies to pursue investment opportunities in the United States in the hopes of penetrating the American market.[22]

Initially, Canada expressed only marginal interest in joining the Mexican-American bilateral discussions announced by George Bush and Mexican President Carlos Salinas on June 10, 1990. Both politically and economically there was little incentive for Ottawa to get involved. Although Mexico was Canada's principal trading partner in Latin America "economic ties between the two countries [were] relatively modest. Overall, Mexico [was] Canada's 17th most important export destination, accounting for $604 million worth of Canadian exports in 1989." In fact, "total trade between Mexico and Canada was only worth $2.3 billion in 1989."[23] Canadian investment was equally unremarkable and the only significant economic relationship, tourism, was strongly balanced in favour of Mexico. Distance was another obvious deterrent and the absence of historic investment ties and weak institutional linkages also played a role.[24] If any interest did exist between Canada and Mexico it was limited to sectoral concerns over energy. Mexico had aspirations of becoming the principal supplier of oil for Canada's eastern provinces and Canada dreamed of selling CANDU reactors to Mexico for its electrification program. "The collapse of the Mexican economy in 1982, however, brought these efforts to a halt before much had been achieved."[25]

Mexico's accession to the GATT in 1986 renewed Canadian interest but it was not until 1990 that significant changes occurred in the bilateral relationship. During that year a Mexican delegation arrived in Ottawa on a trade and investment mission and reciprocal visits to Mexico by both Prime Minister Mulroney and then International Trade Minister John Crosbie were marked by the signing of several economic agreements. These initiatives appeared to indicate a new era in Canadian foreign economic policy, but some observers felt that Ottawa still remained somewhat ambivalent toward a bilateral trade agreement with Mexico. Gilbert Winham, for example, has argued that although the Mulroney government perceived free trade as a means of addressing issues of domestic economic reform and competitiveness it was the FTA, as opposed to the NAFTA, that policy makers considered best able to achieve these goals.[26] Jock Finlayson has also

suggested that the impact of the FTA was more important in that it "served as a proxy for disputes within Canadian society over deeper and more fundamental questions, such as the role of government in the economy, the extent to which market forces should be allowed unfettered sway, and the relative weight to be given to the goals of efficiency versus equity in public policy choices."[27] The NAFTA, on the other hand, was not exposed to the same rigorous internal debate and was not viewed as a reversal of long-standing trade policy. According to Winham, "the FTA was driven by internal concerns over economic competitiveness and structural reform whereas the NAFTA was mainly motivated by an appreciation of external factors such as Canada's position in foreign markets and the effect of other countries' actions on Canada."[28] For Winham, "the FTA was a domestic policy, and the NAFTA was a foreign policy."[29]

It is safe to assume that economic reform and competitiveness were both important considerations in Ottawa's decision to seek out free trade with the United States. It is also somewhat simplistic to suggest that issues of globalization were irrelevant in Canada's pursuit of the FTA. What is more likely is that Canada's participation in the NAFTA was motivated by a number of domestic and international concerns, especially in terms of foreign investment, the existing FTA, and the competition in the American market. Foreign investment, for example, was of particular interest to Canada given the trends developing in the North American economy. The combined total foreign direct investment of all three countries had increased significantly rising from approximately $330 billion (U.S.) in 1986 to more than $571 billion (U.S.) by 1991. At the same time, however, between "1986 and 1991 foreign direct investment virtually doubled in the United States and Mexico, while increasing by only about 40 per cent in Canada."[30] By 1991 the share of United States direct investment in North America had risen to more than 71 per cent from about 67 per cent during the mid-eighties. Mexico's share of direct investment only increased from five per cent to six per cent in the same period and Canada's share actually declined from 28 per cent in 1986 to 23 per cent in 1991. American investment in Canada also declined in comparison to Mexico. In 1991, "total U.S. investment in Canada amounted to more than $68 billion (U.S.) and in Mexico, only about $12 billion (U.S.). However, because of relatively slower growth, Canada's share of U.S. foreign investment steadily declined since the mid-eighties, falling from about 20 per cent in 1986 to 15 per cent in 1991."[31] Mexico's share of foreign investment steadily increased from 1.8 per cent in 1986 to 2.6 per cent in 1991. Robert Clark, Canada's Deputy Chief Negotiator for the NAFTA, made it clear in his comments to the Senate Standing Committee on Foreign Affairs that Canada's primary interest was to remain a prime location for both foreign and domestic sources of investment. Clark testified that:

> by acquiring membership in the NAFTA, by becoming part of an integrated North American market, and by acquiring barrier-free access to both the U.S. and Mexican markets, Canada was ensuring it would be a prime platform for any business wishing to service the entire North American market. Exclusion from the trilateral free trade area would have most certainly meant diversion of investment either to Mexico or to the United States.[32]

The potential threat Mexico posed to Canadian economic interests in the United States also motivated Ottawa to enter the NAFTA negotiations. Mexico and Canada both shipped roughly 70 per cent of all exports to the United States and both countries traded similar goods, such as power generating equipment, telecommunications equipment, transportation, and other parts and machinery. During a ten year period ending in 1987, for example, Canadian exports of machinery and transport equipment to the United States rose from 34 per cent to 43 per cent and Mexico's share expanded from 21 to 42 per cent.[33] It was this overlap in the transportation sector, especially in automobiles and parts, that posed the greatest potential threat to Canadian economic interests in the United States. "Given the greater proximity of U.S. manufacturers to the Mexican market and their greater investment commitments (nearly $17 billion in direct investment), the U.S. share of the Mexican import market far outstripped that of Canada."[34] It is important to point out, however, that Canada and Mexico did not directly compete in the American market. Both countries, for example, had created "niches" in complementary export areas and trade was also dominated by a wide range of products within sectors increasingly consisting of components of more sophisticated goods. Canadian trade with the United States was also dominated by natural resources, semi-finished products, and other producer goods. Mexico, on the other hand, due to an abundance of low cost labour and a smaller natural resource base, enjoyed an advantage in labour-intensive manufacturing export sectors. "Thus, while Canada and Mexico may [have] competed in the same broad industrial sectors, each developed expertise and excellence in different segments (i.e. price and quality) of the same sub-sectors or in related sub-sectors. In short, the challenge of the new competition from Mexico, much of which [could] benefit the Canadian economy in the long run, should not be exaggerated."[35]

Despite the historic lack of a significant trade relationship between Canada and Mexico Ottawa also saw the NAFTA as a means of gaining the same access to the Mexican market as the Americans. Clark, for example, believed there were considerable opportunities for Canadian business and wanted to ensure that Canada was on equal footing with its United States competitors. Clark based his conclusions on the assumption that increased entry into the Mexican market would not take place in the same sectors

dominated by large American consumer products. Canada instead hoped to take advantage of the likely uptake in the Mexican economy. According to Clark:

> Where we are strongest is in those areas where we think Mexico's needs will be greatest. In order to carry out its economic reform and to effectively reach the economic growth rates on which the government is projecting some of its plans, Mexico is going to run into what I call the wall, the wall of infrastructural inefficiencies. In other words, Mexico will not be able to have the export-led growth on which their plans are premised without better harbours, inter-urban transit, roads, telecommunications, and computer systems. They are simply not going to be able to make it work.[36]

Clark prefaced his comments by noting the early success of a number of Canadian companies in Mexico including Northern Telecom, Systemhouse, and Bombardier. Clark also suggested that future liberalization of PEMEX could open opportunities for Canadians in the service sector of the oil and gas industry.

In assessing the underlying motivation for Canadian participation in NAFTA it is clear that Ottawa was primarily concerned with protecting the gains it had made during the previous FTA negotiations, especially in regards to foreign investment and access to the American market. Faced with the prospect of being bystanders "in those initial bilateral talks... the Mulroney government eventually decided it had to protect what the government at least contended had been the gains of the FTA, controversial as the debate was over whether or not there were gains rather than losses."[37] Ottawa was also concerned about the development of a potentially damaging "hub and spoke" North American economy. If the United States pursued bilateral arrangements with each of its trading partners, thus becoming the "hub" of a series of trade relationships, there was the fear that Washington would gain preferential access to each market. There was also the potential that the United States could adopt "selective" protectionism isolating individual states and further jeopardizing the then on-going Uruguay Round of GATT negotiations.[38] At first, the United States was cautious about Canadian interest in the NAFTA. Not only would it complicate the agenda but officials in Washington also felt that "Canadian involvement held considerable scope for mischief and eventual grief for American negotiators, given the similarity of objectives of Canada and Mexico."[39] On September 25, 1990, however, President George Bush announced he would seek Congressional approval for authority to negotiate a "fast-track" trade deal with both Mexico and Canada. Canada was now officially involved in the negotiations but it had not taken a direct route to the table.[40]

On June 12, 1991 formal negotiations between Canada, the United States and Mexico began at a ministerial meeting in Toronto. By the time these negotiations were completed on August 12, 1992 all three countries had completed wide ranging talks

regarding a number of sectoral interests. Although the tabled agreement still faced ratification procedures in Canada, the United States, and Mexico, it was a significant milestone in the evolution of trade and investment relations in North America. Not only did it have the potential to alter significantly continental trade relations but it also marked the first time in which a developing state had reached such a comprehensive economic agreement with two industrialized countries. For the most part the NAFTA extended the majority of the Canada-United States Free Trade Agreement to include Mexico. At the same time, however, the agreement was much more intrusive in the sense that a number of new trade and investment provisions were included. These aspects of the agreement not only limited central autonomy by directly linking areas of federal jurisdiction to the NAFTA but in doing so Ottawa also created an environment that promoted greater freedom for transnational corporations. As one federal official noted at the time "the Agreement provides a framework of rules within which private entrepreneurs can seek to expand their market and investment activities. [In addition], it also sets an important precedent for trade and economic cooperation between the wealthy countries of the North and the less developed countries of the South."[41]

The NAFTA and the FTA

The following section is designed primarily to serve as an introduction to the intrusiveness of the North American Free Trade Agreement. At first glance the NAFTA does not appear to place significant restrictions on either level of government in terms of foreign economic policy. Many aspects of the NAFTA were already in place following the FTA and, as will be discussed shortly, a number of important sectoral issues were ultimately excluded from the final agreement. At the same time, however, it is impossible to ignore the fact that several areas of the new agreement, especially those dealing with rules of origin, customs administration, technical standards, land transportation, trade in services, investment, regulating financial services, intellectual property rights, and dispute settlement, were all strengthened in the NAFTA. In examining these issues in more detail it becomes evident that these provisions further entrenched existing regime norms that had emerged largely as a response to the pressures of globalization. As a result, the NAFTA not only limited the policy options available to Canada but also had an impact on the autonomy of both the United States and Mexico.

One of the key provisions of both agreements concerned rules of origin. These codes and regulations are designed to measure the domestic content of manufactured goods. In other words, for a product to qualify for preferential tariffs it must have a certain percentage of parts and equipment designed or constructed in North America. Although

this may look like a relatively simple issue it can be extremely complicated depending on the products involved. Some goods, such as automobiles, have a number of parts that may not originate from North America. In other cases specific goods may require a certain percentage of North American content while some may qualify for reduced tariffs if a finished product is specifically named in the same category as its parts. A *de minis* rule also prevents goods with only small amounts of non-originating material from being targeted as long as these parts comprise less than seven per cent of the finished product. Rules of origin have been previously addressed in both the GATT and the FTA. Despite this, sectoral disputes resulting from the unclear interpretation of existing codes remain common. By improving the transparency of existing rules of origin the NAFTA attempts to remedy some of these problems, while further liberalizing trade and improving greater access to the domestic markets of Canada, the United States and Mexico.[42]

In order to monitor effectively these new rules of origin the NAFTA also contains an improved system of customs administration. During negotiations the Canadian government made it clear that they wanted to enhance the existing rules for customs administration established in the Canada-United States Free Trade Agreement. This position was directly related to a previous dispute between the two countries regarding Honda automobiles in which the United States Customs Service ruled that Canadian exports did not qualify as North American products under the FTA due to a high level of foreign parts. As a result, Ottawa saw the NAFTA negotiations as an opportunity to address the issue of how these rules and guidelines are interpreted and administered by custom authorities. First, all three countries agreed to modify their certification requirements and streamline import procedures to ensure the consistent application and interpretation of new rules of origin. Similar rules for traders and customs officials were also implemented and importers and exporters were now able to obtain advance rulings on the origin of specific products before they were shipped. In addition, all three countries have also agreed to establish a trilateral working group in order to ensure the future consistency of these measures. Customs procedures do not serve as a direct barrier to trade, but they still have a significant impact on the exchange of goods between countries. By addressing these issues in more detail the NAFTA attempts to liberalize further continental trade relations.[43] At the same time, however, by pursuing a more open market policy the federal government also limits its ability to enact future independent policy initiatives in these issue areas.

Provisions outlining technical standards are also more clearly outlined in the NAFTA. The North American Free Trade Agreement establishes clearer rules than the FTA or the GATT to ensure that countries are unable to use technical standards as a means

of protecting vulnerable sectors of the domestic economy. Traditionally, international standards provisions have been extremely difficult to negotiate as most governments believe that the regulation of these issues, namely health, labour and environmental standards, are fundamental to state sovereignty. In the NAFTA all three countries agreed in principle to the harmonization of many of these standards over a ten year period. Specifically, Canada, the United States and Mexico all agreed to adopt international standards as a measure of compliance and also made a commitment to improve the compatibility of existing domestic rules and regulations. In an attempt to ensure the future relevance of these measures the NAFTA also adopts a procedural "transparency" that requires public notice from any government regarding modifications to standards related measures that might have an impact on North American trade. By establishing the Committee on Standards Related Measures the agreement also encourages cooperation between member states in terms of providing technical advice and information in the process of standardizing these procedures.[44]

Another major improvement included in the NAFTA is its dispute settlement mechanism for the review of antidumping and countervailing duties. The procedures for establishing binational panels to review anti-dumping and countervailing duties, first outlined in Chapter 19 of the FTA, are now a permanent feature of the NAFTA. Unlike the FTA, however, negotiations on the dispute settlement issue were further complicated by the fact that Mexico had a different system of administrative law than both Canada and the United States. Of particular concern was whether or not Mexico would provide procedures for judicial review of countervail and anti-dumping measures similar to those of the other two countries. In the end a compromise was reached that both improved the FTA panels and increased their compatibility with Mexican law. The new dispute settlement mechanism is to serve as a substitute for domestic judicial review in cases where either importing or exporting countries request such an action. The panels consist of five members drawn from a list of individuals provided by each country. The countries involved each pick two members of the panel and the fifth representative is jointly selected by both governments. In an effort to ensure the applicability of domestic legislation the panels must apply the law of the importing country in reaching a decision. Panel decisions are binding, but the NAFTA also provides for an "extraordinary challenge" procedure in which a dissenting country can appeal a countervail or antidumping ruling. The three member committee can either uphold the previous decision or vacate the original panel and establish a new one. Finally, a Special Committee to Safeguard the Panel Process is also included in the NAFTA to ensure that the application of domestic law does not interfere with the binational review process.[45]

The inclusion of land transportation in the NAFTA further removes a number of barriers that previously existed in the provision of bus, trucking, and rail services for the North American economy. For the first time truck operators are now able to carry cargo from one country to another and tour and charter bus companies no longer face limitations and moratoriums limiting access to cross-border transport. Some restrictions remain, however, in terms of the transport of local cargoes. A Canadian operator, for example, can transport a shipment to the United States and then continue on with new cargo destined for Mexico but the same driver is not allowed to move a load between two American destinations. The NAFTA slowly integrates these measures over three, six, seven, and ten year intervals. They mark a significant departure from previous transportation agreements. Port and rail services are also liberalized in the NAFTA and all three countries are committed to ensuring that compatible safety, health, and environmental standards are introduced in the land transportation sector. The NAFTA also calls for the creation of a transportation review panel to begin five years after the implementation of the agreement to ensure that further barriers are removed in the future.[46] On the surface these may seem to be relatively minor issues, but they offer yet another example of the increasing intrusiveness of international economic regimes such as the NAFTA. Not only do these agreements include more areas of domestic legislation but in doing so they directly limit the autonomy of the federal government in terms of its capacity to act independently on matters of North American trade.

One of the most significant aspects of the NAFTA that expands on initiatives first introduced in the Canada-United States Free Trade Agreement concerns cross-border trade in services. These rules are designed to allow the freer movement of services between each country and center on the issues of national treatment, Most Favoured Nation status, and licensing and certification. Although national treatment has been a cornerstone of previous economic agreements involving the trade of goods the NAFTA marks the first time these benefits have been extended to service-based industries. As with commodities, the national treatment considerations of the NAFTA make it clear that each country must treat service providers from Canada, the United States, or Mexico no less favorably than their own. The NAFTA also recognizes the rights of subnational governments by ensuring that national treatment is also extended to include service-based rules and regulations at the state and provincial level. Most Favoured Nation status, which is another basic GATT obligation, extends national treatment to other non-NAFTA countries and further improves competitiveness by no longer obligating service providers to maintain an office or residence in a given territory. Although all three countries had serious concerns regarding the licensing and certification of professional service providers they are also included in the

NAFTA. As with other sectors the signatories were concerned that attempts to harmonize the regulation of these professions could contribute to weaker health, environment and/or social standards. The NAFTA, however, provides a means for mutual recognition of certification, especially in terms of the licensing of foreign legal consultants and the temporary licensing of engineers. As progressive as these improvements are, the NAFTA also includes a number of exclusions in which the free movement of services is not yet permitted. Specifically, these include government procurement, energy related services, subsidies, and financial services. These exclusions are largely a result of each country attempting to protect certain sectors of its domestic economy. The NAFTA's liberalization of cross-border trade in services is still an important improvement over the provisions of the FTA and other previous GATT agreements.[47]

According to Winham, the most significant difference between the FTA and the NAFTA involves the issue of investment. By ensuring the protection of investors and establishing a dispute settlement mechanism the NAFTA reflects the growing importance of investment in the changing global economy. The inclusion of investment in the Canada-United States Free Trade Agreement was the first significant departure from previous international trade agreements. Not only did the FTA extend national treatment to new investment but it also liberalized Canada's rigorous review procedures for acquisitions and takeovers of domestic companies. As Winham has noted, the NAFTA's article 1139 has substantially broadened the definition of investment. Unlike the FTA, which covered only direct foreign investment, the NAFTA includes almost all kinds of investments routinely made across national borders, namely equity and debt securities, real estate, loans and interest, and capital commitments.[48] The NAFTA also extends its chapter to include services whereas the FTA limited its investment measures to the trade of goods. Finally, "and perhaps most importantly, the NAFTA also provides a mechanism for dispute settlement and arbitration between private investors and host states in addition to the state-to-state dispute settlement provisions of the FTA."[49] If investors believe that a host government, or those of its sub-national counterparts, are violating the provisions of the investment chapter investors now have the right to request an arbitration tribunal. As Winham suggests, this "provides important increased security for foreign investment, resulting in greater stability for international transactions."[50]

In the spirit of improving the free movement of capital and services within the North American economy the NAFTA also includes extensive provisions for regulating financial services. This section of the agreement centers on the banking, insurance, and securities sectors. National treatment and Most Favoured Nation status have also been extended to include other financial services. There are, however, several country-specific

exemptions. Canada, for example, has extended to Mexico the FTA's "10/25" rule, which prohibits non-residents from collectively acquiring more than 25 per cent of any federally regulated institution, and Mexican banks are not subject to the combined 12 per cent asset ceiling applicable to non-NAFTA banks. The United States, with the exception of some limitations for Mexican securities firms, has also agreed to extend its FTA provisions to include Mexico and will continue to allow financial groups from that country to pursue on-going interests in American banking operations. Mexico, on the other hand, successfully negotiated the right to phase in changes to its financial sector during a transition period ending in the year 2000. At the same time the Mexican government did pledge to increase gradually the market share limit in its banking and securities sectors from eight to fifteen per cent and 10 to 20 per cent respectively. In addition, Mexico plans to extend national treatment to finance companies establishing institutions within the country for mortgage lending, consumer lending, corporate lending, and credit card services.[51] In the case of insurance, Canadian and American firms can access the Mexican market either by initiating joint ventures with Mexican companies or by establishing independent subsidiaries. Foreign equity in joint ventures will initially be limited to 30 per cent but all restrictions, including those for independent subsidiaries, will be removed by the year 2000.[52]

The inclusion of intellectual property rights in the NAFTA also distinguishes the agreement from the FTA. During the negotiations Canadian officials hoped to strengthen these provisions in order to increase the attractiveness of Canada as a location for world class investment. Under the NAFTA, which borrowed heavily from the then ongoing Uruguay Round of GATT negotiations, each country is obligated to provide protection for the effective enforcement of intellectual property rights such as trademarks, plant breeder's rights, industrial designs, trade secrets, and integrated circuits. In matters of copyright protection the NAFTA also requires each country to provide rental rights and protection for computer programs, databases, and sound recordings. Each signatory is also required to register all patents, including pharmaceuticals and agricultural chemicals, and to eliminate any special provisions for the acquisition of patent rights either locally or abroad. In addition all three countries have agreed to protect service marks, encrypted satellite signals, and government test data submitted by companies seeking federal health and safety certification. Finally, the NAFTA includes enforcement procedures that ensure the protection of intellectual property rights at national borders.[53]

The last major difference between the FTA and the NAFTA involves the institutional provisions and the dispute settlement chapters of the new agreement. The main institution of the agreement is the trilateral Trade Commission which meets annually and consists of senior officials assigned by each country. The day-to-day functioning of the

Commission, however, is largely the responsibility of other representatives from Canada, the United States and Mexico, who participate in numerous committees and working groups associated with the monitoring and implementation of the various NAFTA provisions. A permanent Secretariat has also been included to provide institutional support for officials from all three countries. The dispute settlement provisions of the NAFTA, which are similar to those used to rule on anti-dumping and countervail violations, have also been improved over those established under the FTA. When a signatory decides that another member-state has violated the interpretation or application of the NAFTA each of the countries involved must first consult with one another but can then ask for a special meeting of the Trade Commission, with all three countries present, if the matter is not resolved within 30 to 45 days. If the Commission is unsuccessful in resolving the dispute a panel proceeding is initiated by the complaining country. If the issue falls under the jurisdiction of both the NAFTA and the GATT the country filing the complaint can choose to have the dispute heard in either forum.[54] If a NAFTA panel is requested, five members are selected from a roster of trade and legal experts previously compiled by Canada, the United States and Mexico. Each country chooses two members of the panel from the opposing side and a chair is either mutually agreed upon or a non-NAFTA national is selected. Unless either country decides otherwise the panel will provide a confidential report within 90 days of its selection. The two parties then have 14 days to respond to the report and a final panel recommendation is submitted to the commission usually within 30 days. If no decision is made within this time frame the complaining country has the right to suspend the application of equivalent benefits until the matter is resolved. Of course, if the other country thinks these retaliatory measures are excessive they too have the right to submit the matter to a NAFTA panel. In sum, "the dispute settlement chapter includes strengthened mediation and conciliation provisions and builds upon the FTA in assuring a professional roster of panelists capable of providing non-partisan advice and rulings."[55]

From the above discussion it is clear that there are a number of similarities and differences between the North American Free Trade Agreement and the previous Canada-United States Free Trade Agreement. Although providing the foundation for the new agreement the FTA has been extensively modified in matters relating to rules of origin, customs administration, technical standards, anti-dumping and countervailing duties, land transportation, trade in services, investment, financial services, intellectual property, and the settlement of disputes. In addition, the language of the original FTA has also been altered to ensure that future accession to the NAFTA is possible for other countries in Latin America. These developments have obvious implications for the on-going relevance of the FTA. Both Canada and the United States have agreed that the NAFTA will effectively

replace the FTA except in those areas where similar provisions have not been extended to the new agreement. For the purposes of this analysis, however, it is perhaps more important to stress the fact that the provisions discussed above have policy implications for all three signatories. As rules and guidelines become more extensive and entrenched they continue to limit the capacity of central governments to act independently outside existing regime norms. In the short term, the NAFTA may enhance the autonomy of sub-national governments but there remains the very real possibility that their autonomy will also be limited as areas of provincial and state jurisdiction are added to these agreements. Regardless, officials at both levels of government appear to have given little thought to these considerations. As one representative suggested following the signing of the agreement the "aim of the NAFTA was to extend the provisions of the FTA to include Mexico. This has been done. And Canada's important achievement in negotiating better access to its largest trading partner has been secured and strengthened."[56]

Domestic Sectoral Interests and the Intrusiveness of the NAFTA

While there are a number of differences between the FTA and the NAFTA it is also important to acknowledge the intrusiveness of both agreements in terms of specific sectors within the North American economy. In examining these issues more closely it becomes clear that the NAFTA is less intrusive in certain areas such as agriculture and energy, than suggested by many of the provisions listed above. It would be wrong, however, to dismiss the intrusiveness of the NAFTA on these grounds. After all, in addition to the progress made on issues such as trade in goods and border measures, the NAFTA has had a positive impact on the successful resolution of sectoral concerns in other international forums. This is especially evident in terms of the last minute agreement on agriculture at the Uruguay Round of the GATT. The fact that these areas were not resolved in the NAFTA is more directly related to the internal and external pressures that made the negotiation of these matters more difficult. Agriculture, for example, remains a highly contentious issue in all three countries. The energy provisions of the NAFTA were severely limited given the constitutional protection they receive under Mexican law. Therefore, even though the provisions of the NAFTA may not have a direct impact on all sectoral interests there is still evidence to suggest that the agreement touches on a number of important areas of provincial jurisdiction and that it imposes additional restrictions on the federal government's ability to intervene in the domestic economy. The exclusion of some of these interests simply suggests that, as with all international agreements, it was not possible to successfully resolve every outstanding issue area.

Two aspects of the NAFTA that did have an important impact on domestic jurisdictional concerns were trade in goods and the elimination of a number of new border measures. As with the FTA the most significant provisions of the North American Free Trade Agreement deal with the trade of goods. These rules provide a foundation for much of the rest of the agreement, especially in terms of national treatment. The NAFTA incorporates the national treatment obligations of the GATT which state that once goods have been imported from a member country they are not to be discriminated against by any level of government. Improved market access is also facilitated by the removal of tariffs. The NAFTA sets up a number of schedules in which tariffs on goods qualifying as North American in origin are to be eliminated. The NAFTA phases out both the United States Generalized System of Preferences (GSP) and the Canadian General Preferential Tariff (GPT). While the tariff phase-outs negotiated during the Canada-United States Free Trade Agreement are to be continued as scheduled, the NAFTA stipulates that a more rapid elimination of barriers can be negotiated at the discretion of the three countries involved.[57]

In the NAFTA each signatory also makes a commitment to eliminate a number of border measures that restrict imports and exports. Each country maintains the right to impose border restrictions to protect human, animal, or plant life, and specific sectors have separate guidelines for imports and exports. Other measures have been streamlined or removed, especially in relation to quotas and import licenses. Also included in the NAFTA are measures gradually eliminating customs user fees, custom duties, and other export taxes. The duty free temporary admission of goods is also allowed in the new agreement. This improves market access by allowing business persons "temporary entry" into either Canada, the United States, or Mexico and also allows the cross border transport of professional equipment, commercial samples, advertising films, and goods for sporting events and demonstrations, for short-term business considerations. In addition, the NAFTA stipulates that standards related measures, such as government technical regulations designed to protect human, animal and plant life, will not be used as unnecessary obstacles to trade. The NAFTA does not address the contentious issue of alcohol, other than noting that Canadian Whiskey, Tequila, Mezcal, Bourbon Whiskey, and Tennessee Whiskey are all subject to strict rules of origin. Most observers, however, believe the provisions aimed at improving trade in goods in the North American economy offer a number of sectoral opportunities for Canada. In particular, Ottawa has identified fertilizers, construction and resource machinery, rail and industrial equipment, selected wood pulp and paper products, telecommunications equipment, and printed circuit boards, as some of those with the most potential for growth.[58]

As already noted a particularly significant and controversial sectoral issue has been agriculture. Given the lack of progress on agriculture at the then on-going Uruguay Round of the GATT, Canada, the United States, and Mexico were limited in terms of what could be included in the NAFTA. For the most part, all three countries were reluctant to negotiate a binding agreement on agriculture that might become incompatible with future initiatives at the international level. As a result, each government negotiated separate bilateral agreements as part of the NAFTA. For agricultural trade between Canada and the United States both countries agreed that Chapter 7 of the FTA would continue to apply while each negotiated their own agreement with Mexico. In the bilateral agreement between Canada and Mexico both countries pledged to eliminate most tariff and non-tariff barriers on agricultural trade over a 10 to 15 year period.[59] Although Canada excluded its historically sensitive dairy, poultry, egg, and sugar sectors it did agree to remove import restrictions on wheat, barley, beef and veal, and margarine. For wheat, Canada also made a commitment to replace existing barriers with a visible tariff which would then be gradually phased out over the transition period. Specified quantities of barley and table potatoes were to become duty-free immediately and Mexico promised to remove all tariffs on lentils, honey, dried peas, millet, raspberries, rye and buckwheat. Mexico, which lacks the arable land and water supply to raise required supplies of livestock, will also remove tariffs on Canadian pork and other meat products within ten years.

One issue that was addressed on a trilateral basis was the difficult one of agricultural export subsidies. In the new agreement all three countries agreed to eliminate export subsidies other than those necessary for countering subsidized imports from other non-NAFTA countries. Specifically, Canada, the United States, and Mexico are now required to give at least three days notice of any new agricultural subsidies to be introduced. In addition, all of the signatories agreed that if subsidized non-NAFTA goods were being imported consultations with that government could be requested with the intent of introducing measures to counteract these imports. If the importing country agrees to counter that subsidy, however, no measures can be taken by the complaining government to introduce its own export subsidies. A trilateral committee on agricultural trade was also established in the new agreement in order to monitor the implementation of the NAFTA and to provide a forum for future negotiations. As significant as the developments may be, it is important to acknowledge that 85 per cent of Mexican products currently enter Canada duty-free and most imports are products the country is unable to produce itself, such as coffee and tropical fruits. Canada has also maintained its import quotas and controversial national supply management system both of which have been traditionally targeted by other countries as unfair protectionist measures. In sum, although the NAFTA provides a

potential market opportunity for producers of red meat and grains in Mexico the provisions of the FTA remain in place for Canadian exports to the more important American market.[60]

Although the agricultural provisions of the NAFTA are of most importance to the prairie provinces, especially Alberta, and the dairy and poultry producers of Quebec, changes to the automobile sector are of most direct interest to Ontario. The North American Free Trade Agreement seeks to remove most barriers for trade and investment in automobiles, trucks, buses, and automotive parts over a ten year period. During the negotiations Canada hoped to open up the Mexican automotive sector in an attempt to gain as much access as possible to its untapped market of 85 million consumers. Most automotive goods already move freely between Canada and the United States due to the previously-negotiated Canada-United States Automotive Agreement (Auto Pact). In the NAFTA, however, Mexico agreed to reduce immediately 50 per cent of its tariffs on passenger automobiles and to eliminate all other existing barriers for vehicles and parts over a ten year period. All three countries also agreed to raise the level of North American content in order for vehicles to qualify for reduced tariffs. Whereas the FTA set the rules of origin at 50 per cent, the NAFTA raises this to 62.5 per cent for passenger automobiles and light trucks and to 60 per cent for other vehicles and parts. An improved tracing system during the production chain is also to be developed in order to ensure that the content of non-NAFTA parts is strictly monitored. In doing so all three countries hope to encourage the development of a truly integrated North American automobile industry as well as eliminating the potential for future trade disputes in this sector.

In establishing these criteria the NAFTA effectively terminates the Mexican Auto Decree. During the agreement's ten year transition period a number of the restrictions outlined in the Decree will be eliminated. Prior to the NAFTA the number of foreign imports to Mexico were limited based on sales in the Mexican market and to those companies actually assembling automobiles in Mexico. Canadian and American parts producers were essentially shut out of the Mexican market as the Decree set extremely high rules of origin and considerable restrictions limited foreign ownership in domestic companies. Under the NAFTA, however, Mexican producers are now allowed to purchase parts from foreign owned maquiladoras and are able to count these towards the new rules of origin outlined in the agreement. The Mexican Auto-Transportation Decree, which covered trucks and buses, will also be eliminated over a five year period. The NAFTA also effectively removes investment barriers by immediately allowing full foreign ownership in companies supplying the domestic economy and although 49 per cent ownership limits remain in place for other parts enterprises these will also be removed over a five year period. Given the importance of the automobile sector to the Canadian economy (it

accounted for up to 32 per cent of manufactured exports in 1992) improved access to the Mexican market offers considerable opportunities for domestic interests in Ontario and other producing provinces. At the same time, however, greater liberalization will also force Canadian producers to become more efficient in order to compete with the growing competition within the North American market.[61]

Another important sector of the Canadian economy affected by the North American Free Trade Agreement is energy and basic petrochemicals. During the NAFTA negotiations one of the key objectives of Canadian officials was to maintain and strengthen the existing FTA rules in relation to energy. This goal was extremely difficult given that the Mexican energy sector is both constitutionally and legally protected from foreign investment. In fact, all domestic energy supplies in Mexico are provided by the state-owned Petroleos Mexicanos (PEMEX). Under the NAFTA both Canada and the United States confirmed their respect for the domestic constitutional obligations of Mexico. At the same time the government of Mexico acknowledged the need to liberalize its state-owned energy sector and pledged to remove these barriers over an unspecified period of time. The energy issues included in the NAFTA are generally built on the GATT guidelines regarding restrictions on imports and exports for energy and basic petrochemicals. Specifically, import and export price requirements are prohibited and all three countries are restricted from imposing taxes or duties on the export of energy unless the same tax is applied to goods consumed in the domestic market. Each country is also allowed to maintain its export and import licensing systems as long as they are operated under the terms of the agreement.

The energy provisions of the NAFTA also allow each country to impose import and export restrictions for reasons of national security and/or if a particular resource is non-renewable or in short supply. Having said that, if one of the signatories imposes restrictions, the agreement states that the proportion of total supplies to other NAFTA countries must not be reduced to the levels of the previous three years. Further, the country imposing the restrictions is not allowed to increase prices for exports and must not disrupt its normal supply of energy. While Mexico is not bound to these measures, as it has taken a reservation on these provisions, the NAFTA still includes opportunities in the Mexican economy in areas not related to the oil, gas, refining, basic petro-chemicals, nuclear, and electricity sectors. Investment opportunities, as limited as they may be, exist in non-basic petrochemical goods and in "own use" electrical generating facilities. The NAFTA also attempts to promote cross-border trade in natural gas and petro-chemicals by giving end users and suppliers the right to bid on and negotiate supply contracts. Unless Mexico undergoes significant constitutional reform in the future, however, it is unlikely

that either Canada or the United States will make any progress in penetrating the Mexican market.[62]

Two other significant aspects of the North American Free Trade Agreement include government procurement and textiles and apparel. In matters of government procurement the NAFTA opens the markets of all three countries to competition from suppliers for goods, services, and construction contracts on a non-discriminatory basis. The three governments have agreed to tender awards for contracts over $50,000 (U.S.) for goods and services and over $6.5 million (U.S.) for construction projects for federal government departments and agencies. For federal government enterprises the NAFTA applies to procurements of over $250,000 (U.S.) for goods and services and over $8 million (U.S.) for construction. In addition, the agreement outlines procedural provisions that promote transparency in regards to technical specifications, qualifications of suppliers, and discriminatory buying practices. There is also a commitment to establish a bid protest system that will allow suppliers from all three countries to challenge both procedures and awards. This section of the NAFTA does not apply to the procurement of arms or other measures related to national security and each country is able to reserve the right to continue to favour national suppliers for specific procurement issues outlined in the agreement. Given that these provisions do not extend to the procurement practices of sub-national governments, such as states and provinces, it is likely that these provisions will provide only modest market opportunities for any of the signatories in the near future.[63]

Textiles and apparel, on the other hand, appear to offer greater economic potential for Canada. This section of the NAFTA outlines rules and provisions for trade in fibres, yarns, textiles, and clothing, and effectively replaces the restrictions applicable to the international Multi Fiber Agreement (MFA). Under the NAFTA each country commits itself to the reduction of tariffs and customs duties on textiles and apparel in the North American market. In addition, none of the signatories are allowed to impose any new quotas other than those specifically noted in the "safeguards" provision of the agreement. Under this provision each country is only able to implement tariffs if at any time during the transition period its textile or apparel producers are faced with serious damage from an increase in imports from another NAFTA country. Under the NAFTA, however, these new barriers must take the form of visible tariffs and must be a temporary measure. The agreement also toughens the rules of origin for textiles and apparel outlined in the FTA. In other words, in order for goods to receive preferential treatment they must be made predominantly from North American fibers. At the same time, this section includes "tariff rate quotas" (TRQs) which permit yarns, fabrics, and apparel made in North America to qualify for preferential duties even if they do not satisfy the new rules of origin. The

TRQs, first included in the FTA and increased annually over the last five years, allow domestic manufacturers to remain competitive and offer potential export opportunities for Canadians in both the United States and Mexican markets.[64]

Finally, the North American Free Trade agreement is also notable for what is not included in the final document. Specifically, the NAFTA outlines a number of "general exceptions" that allow each country to take certain measures in order to protect interests such as public morals, human, animal, or plant life, exhaustible natural resources, and national health and welfare programs. In addition, nothing in the NAFTA is paramount to the essential security interests of a given country and trade restrictive measures taken to address balance of payments problems are only allowed in limited circumstances in accordance with the rules of the International Monetary Fund (IMF). Each country also has the right to protect its cultural industries and take retaliatory measures against trading practices deemed to violate these principles. Any action taken in this regard, however, is not limited to the guidelines and obligations of the NAFTA.[65]

Conclusion

Despite the intrusiveness of the North American Free Trade Agreement there are still a number of factors which suggest that the NAFTA has less of an impact on provincial jurisdiction and regional economic interests than the FTA. Once again the majority of exclusions granted in the NAFTA fall under provincial control and most sectoral issues, such as investment and services, were already introduced in the original free trade agreement with the United States. Trade between Canada and Mexico is also minimal and there are only a small number of sectors in which both countries face direct competition. Although most tariffs are to be eliminated over a ten to fifteen year period Canada not only maintained its agricultural supply management system for dairy, milk, and egg production, but also managed to address the concerns of Ontario and Alberta in terms of the Auto Pact and the energy sector. Canadian clothing manufacturers in Quebec will arguably face increasing pressure from cheaper Mexican goods but for the most part the provinces came away from the NAFTA having given up little more than during the FTA. If anything, the NAFTA appeared to reinforce the conclusion that Ottawa was willing to negotiate areas of federal jurisdiction but was not prepared to include significant provincial interests in the final agreement.

When examined in more detail, however, it is clear that the NAFTA is as intrusive at the federal level, if not more so, than Canada's previous international trading commitments. The provisions of the NAFTA are such that each country is obligated to alter domestic procedures and/or legislation in terms of rules of origin, customs

administration, technical standards, anti-dumping and countervail duties, land transportation, trade in services, investment, financial services, and intellectual property rights. In addition, tariffs on a wide range of goods and restrictive border measures are eliminated and all three signatories have agreed to submit binational trade conflicts to a dispute settlement mechanism set up under the NAFTA. Further, it is clear that specific sectors of the Canadian economy, such as agriculture, the automotive industry, energy, government procurement, and textiles are to be directly influenced by the provisions of the new agreement.[66] The addition of the NAFTA side deals on environment and labour, which will be discussed in greater detail in a later chapter, offer yet another example of both the increasing intrusiveness of international economic regimes and the tendency of states to rely on these mechanisms as a means of managing global trade and investment. Perhaps not surprisingly, these developments have also had an impact in terms of limiting the capacity of both levels of government to pursue independent domestic economic policy initiatives. As the next chapter points out, however, there are several factors that suggest the provinces have been less affected by these changes than the federal government. Not only are there specific domestic constitutional provisions that appear to empower the provinces in the formulation of foreign economic policy but Ottawa has also faced challenges in terms of past sectoral trade disputes and previous provincial activity in the international system.

Endnotes

1. Jock A. Finlayson, "Trade and Global Interdependence," in David G, Haglund and Michael K. Hawes, eds., *World Politics: Power, Interdependence and Dependence* (Toronto: Harcourt Brace Jovanovich, 1990), p. 283.
2. Ibid.
3. Michael M. Hart, *Trade - Why Bother?* (Ottawa: Carleton University Centre for Trade Policy and Law, 1992), p. 30.
4. Ibid., p. 33.
5. Ibid.
6. Ibid.
7. Canada, Department of Foreign Affairs, "Notes for an Address by the Honourable Roy MacLaren, Minister of International Trade, at the Canadian Luncheon - Davos Switzerland," *Statement* (January 29, 1994), p. 1.
8. Michael M. Hart, *Canadian Economic Development and the International Trading System: Constraints and Opportunities* (Toronto: University of Toronto Press, 1985), p. 11.
9. A number of regime theorists argue persuasively that states, as opposed to economic regimes, control the exchange of goods and services in the international economy. For a discussion of this perspective linked directly to the GATT, please see Joseph M. Grieco, *Cooperation Among Nations: Europe, America and Non-Tariff Barriers* (Ithaca: Cornell University Press, 1990). If a source for background information on the GATT is required, please see, Gilbert R. Winham, *The Evolution of International Trade Agreements* (Toronto: University of Toronto Press, 1992).
10. Finlayson, "Trade and Global Interdependence," p. 299.
11. Canada, Department of Foreign Affairs, "Notes for an Address by the Honourable Roy MacLaren, Minister for International Trade, at the Canadian Luncheon - Davos Switzerland," p. 2.
12. Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Issue Number 21, Wednesday, May 4, 1988* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1988), p. 20.
13. Stephen J. Randall, "Introduction," in Stephen J. Randall, Herman Konrad and Sheldon Silverman, eds., *North America Without Borders?* (Calgary: University of Calgary Press, 1992), p. 3.
14. Michael M. Hart, *A North American Free Trade Agreement* (Ottawa: Centre for Trade Policy and Law - The Institute for Research on Public Policy, 1990), p. 32.
15. Drew Fagan, "Mexico's Ten Year Turnaround," *Globe and Mail* September 24, 1992, p. C-4.
16. Although Mexico made no secret of its reluctance to embrace liberalized trade it was no stranger to the GATT. During the Portillo administration in the 1970s Mexico participated in the Tokyo Round negotiations and announced its plans to join the GATT. By 1979 it had negotiated its protocol of accession to the GATT but Portillo, facing increased domestic pressure from critics who saw the agreement as a means of increasing American influence in Mexico, ignored the support of his Cabinet and withdrew Mexico's GATT application in 1980. Following the crash of the Mexican economy, however, the GATT became a pillar of the country's new export oriented strategy. Mexico officially became a member of the GATT in 1986.
17. Juan Jose Moreno Sade, "Mexican Trade Policy and the North American Free Trade Agreement," in Randall, Konrad and Silverman, eds., *North America Without Borders?* p. 8.
18. Ibid., p. 9. By 1990 the positive impact of these reforms included: the reduction of inflation to under 20 per cent (from 160 per cent in 1988); the rise in real GDP, after

stagnating and then decreasing, by 1.5 per cent in 1987, 1.1 per cent in 1988 and 3.0 per cent in 1989; the reduction of official and private foreign debt from $107.4 billion (U.S.) to $96.3 billion (U.S.) by the middle of 1989; the rise in labour productivity from 8.4 per cent in 1987 to 34.9 per cent in 1988; and the increase in new foreign investment from $4.6 billion in 1982-85 to almost $12 billion in 1986-89. Positive signs of growth and development have continued in the 1990s. In fact, of the three North American economies Mexico's is expected to be the fastest growing, with growth in input averaging 5.5 per cent over the 1993-95 period. Statistics taken from: Hart, *A North American Free Trade Agreement,* p. 37; and Stelios Loizides and Gilles Rheaume, *The North American Free Trade Agreement: Implications for Canada* (Ottawa: The Conference Board of Canada, 1993), p. 4.

19. Minor agreements dealing with improved consultation and dispute settlement were signed in 1987 and 1989 and bilateral sectoral arrangements have also been negotiated between the two countries on steel, textiles, and clothing.

20. Hart, *A North American Free Trade Agreement,* p. 65.

21. Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Issue Number 21 - Sixteenth Proceedings on: The Examination of Negotiations for a North American Free Trade Agreement Among Canada, the United States and Mexico and any Other Related Trade Developments, Tuesday, May 11, 1993* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1993), p. 9.

22. The United States was not solely motivated by economic considerations in its pursuit of closer relations with Mexico. In sum, Washington also hoped that NAFTA: would serve as a means of stimulating the Mexican economy to ensure an orderly economic transition to liberalized trade; would strengthen Mexican prosperity and create an environment for a more openly democratic system; strengthen its crack down on illegal drugs; and serve as a warning to Europe that it would go elsewhere to liberalize trade if the EC could not get its house in order during the ongoing GATT negotiations. The southern U.S. border states were also concerned with the problem of illegal immigration. In fact, the Mexicans used the issue of undocumented immigrants as a bargaining chip throughout the negotiations repeatedly telling the United States it could "take our goods or take our people."

23. British Columbia, Ministry of Development, Trade and Tourism, International Economic Policy Branch *British Columbia and Mexico - The Trilateral Free Trade Proposal: A Discussion Paper* (Victoria: Ministry of Business and Immigration, 1990), p. 2. Some observers believe these figures may be significantly under-reported due to the heavy trade in machinery and transportation equipment involving American multinationals and likely transshipment through the United States. Even so, bilateral trade with Mexico rated below bilateral trade with Japan, the EC, the Asian NICs, the People's Republic of China and the USSR in 1989.

24. In fact, previous institutional linkages between the two countries have been almost non-existent. A commercial agreement was signed in 1946 in which both countries granted most-favoured-nation status to one another but this reflected post-war politics rather than any significant new trading relationship.

25. Hart, *A North American Free Trade Agreement,* p. 67.

26. Gilbert R. Winham, "NAFTA and the Trade Policy Revolution of the 1980's: A Canadian Perspective," *International Journal*, 39 (Summer, 1994), pp. 472-508.

27. Jock Finlayson, "Directions for Canadian Trade Policy: A Private Sector View," *Canadian Foreign Policy* (Fall, 1993), p. 113. As cited in Winham "NAFTA and the Trade Policy Revolution of the 1980's: A Canadian Perspective," p. 507.

28. Winham "NAFTA and the Trade Policy Revolution of the 1980's: A Canadian Perspective," p. 493.

29. Ibid.

30. Loizides and Rheaume, *The North American Free Trade Agreement: Implications for Canada*, p. 5.
31. Ibid.
32. Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Issue Number 21, May 11, 1993*, p. 8.
33. Figures taken from Hart, *A North American Free Trade Agreement.* For more information please see tables, pp. 60-73.
34. Ibid., p. 71.
35. Ibid., p. 72. It is difficult to reach conclusions on comparative market advantage in the United States based solely on raw trade data. The fact that two countries ship similar commodities to a third country does not mean they will directly compete with one another. Both states may aim their exports at different regions and the same goods may differ greatly in the eyes of purchasers. In the transportation sector, for example, Mexico ships small cars to the United States, while Canada ships large cars and vans. Further, competition in a particular sector may be so one sided that changes in specific tariffs will do little to alter the existing market. A satisfactory assessment of Canadian-Mexican competition in the U.S. market requires a product by product canvas as basic trade data says little about competitive conditions in any given market. This is extremely difficult, if not impossible, however, given the reality of trade statistics. Canada and Mexico, compete in the U.S. market in more than 2503 different goods and out of necessity there is a great deal of aggregation of different goods under various commodity groupings.
36. Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Issue Number 21, May 11, 1993*, p. 12.
37. Randall, "Introduction," p. 4.
38. For a more detailed discussion of the "hub and spoke" approach, please see Richard G. Lipsey, *Canada at the U.S.- Mexico Free Trade Dance: Wallflower or Partner?* (Toronto: C.D. Howe Institute, 1990).
39. Hart, *A North American Free Trade Agreement,* p. 92.
40. Critics have also argued that the negotiation process for the NAFTA, if not the agreement itself, set a dangerous precedent for future Canadian foreign economic policy given the lack of debate that occurred prior to the agreement. As one provincial official conceded in a confidential interview, "NAFTA marked a radical departure for Canada. We were caught off-guard when the Americans started talking to Mexico and we backed into a deal without even considering the long term implications that might be involved." Although the content of NAFTA may not be that significant it is clear that "the defensive posture we took to the negotiations set a bad example for Canada both internationally and domestically. Not only did we not do our homework but we continued to adopt a 'muddle-through' approach to international economic policy and Canadian federal-provincial relations that could lead to serious problems in the future."
41. Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description* (Ottawa: International Trade Communications Group, Supply and Services Canada, August 1992), p. i.
42. For a more detailed examination of rules of origin, please see Canada, Department of External Affairs and International Trade, "Chapter Four: Rules of Origin," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1992), pp. 100-112. Specific rules of origin are outlined in Annex 401[1] of vol. 2. of the NAFTA text, pp. 308-432. A Brief overview of rules of origin is also available in Canada, Department of External affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, p. 1.

43. For a more detailed examination of customs administration, please see Canada, Department of External affairs and International Trade, "Chapter Five: Customs Administration," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 113-121. A Brief overview of customs administration is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, p. 1.

44. For a more detailed examination of technical standards, please see Canada, "Chapter Nine: Technical Standards," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol 1. pp. 157-67. A Brief overview of technical standards is also available in Canada, *North American Free Trade Agreement: An Overview and Description*, pp. 7-8.

45. For a more detailed examination of antidumping and countervailing duties (and the dispute settlement mechanism established to rule on these issues), please see Canada, Department of External Affairs and International Trade, "Chapter Nineteen: Review of Antidumping and Countervailing Duty Matters," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol 2. pp. 272-87. A Brief overview of this aspect of the NAFTA is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, pp. 9-10. Further information on Chapter Nineteen is available in Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - First Proceedings on: Bill C-115, An Act to Implement the North American Free Trade Agreement, Tuesday, June 8, 1993* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1993).

46. For a more detailed examination of land transportation, please see Canada, Department of External Affairs and International Trade, "Chapter Twelve: Trade in Services," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 220-226. Specific provisions for land transportation are outlined in Annex 1212 of the NAFTA agreement. A Brief overview of land transportation is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, pp. 11-12.

47. For a more detailed examination of trade in services, please see Canada, Department of External Affairs and International Trade, "Chapter Twelve: Trade in Services," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 220-226. A Brief overview of trade in services is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, pp. 10-11.

48. Winham has defined direct foreign investment as "an investment made by and under the control of a foreign head office" in, Winham, "NAFTA and the Trade Policy Revolution of the 1980's: A Canadian Perspective," p. 497.

49. Ibid.

50. Ibid. For a more detailed examination of the NAFTA provisions for investment, please see Canada, Department of External Affairs and International Trade, "Chapter Eleven: Investment," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 206-219. A Brief overview of investment is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, pp. 13-14. Further information on Chapter Eleven is available in Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign*

Affairs - Seventeenth Proceedings on: The Examination of Negotiations for a North American Free Trade Agreement Among Canada, the United States and Mexico and any Other Related Trade Developments, Tuesday, May 19, 1993 (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1993).

51. The agreement also states, however, that during the transition period the aggregate assets of these subsidiaries can not exceed three per cent of the aggregate assets of all banks and financial institutions in Mexico.

52. The new provisions for financial services in the NAFTA are also subject to the agreements dispute settlement procedure. For more details on financial services, please see Canada, Department of External Affairs and International Trade, "Chapter Fourteen: Financial Services," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 233-241. A Brief overview of financial services is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, pp. 14-16. Further information on Chapter Fourteen is available in Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Eighth Proceedings on: The Examination of Negotiations for a North American Free Trade Agreement Among Canada, the United States and Mexico and any Other Related Trade Developments, Tuesday, May 19, 1992* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1992).

53. For a more detailed examination of intellectual property, please see Canada, Department of External Affairs and International Trade, "Chapter Seventeen, Intellectual Property" in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 2. pp. 255-269. A Brief overview of intellectual property is also available in Canada, *North American Free Trade Agreement: An Overview and Description*, p. 16.

54. If the third NAFTA country wants to argue the same case the two original complaintants will attempt to decide whether the dispute should be heard by the GATT or NAFTA panels. Once the issue is brought before either the GATT or NAFTA panels the selected forum must be used at the exclusion of the other. If the two countries are unable to agree a NAFTA panel will be initiated.

55. Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, vi. For a more detailed examination of the NAFTA's institutional provisions and dispute settlement process, please see Canada, Department of External Affairs and International Trade, "Chapter Twenty: Institutional Arrangements and Dispute Settlement Procedures," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 288-296.

56. Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, p. vi.

57. For a more detailed examination of national treatment and other market access issues, please see Canada, Department of External Affairs and International Trade, "Chapter Three: Trade in Goods" in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 11-99. A Brief overview of trade in goods is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, pp. 2-3.

58. Temporary entry of goods and a number of other sectoral issues are also covered in Chapter Three of the NAFTA Agreement. For a more detailed examination of provisions outlining regulations for temporary entry for business persons, please see Canada, Department of External Affairs and International Trade, "Chapter Sixteen: Temporary Entry for Business Persons," in *North American Free Trade Agreement: Between the*

Government of Canada, the Government of the United Mexican States and the Government of the United States of America, vol. 1. pp. 245-254.

59. The United States agreement immediately replaced all tariff and non-tariff barriers in agricultural trade with either "tariff-rate quota's or ordinary tariffs. Not only does this immediately eliminate tariffs on a wide range of agricultural products but it also improves the transparency of barriers in an effort to facilitate their elimination over a 10 to 15 year transition period.

60. For a more detailed examination of agriculture provisions, please see Canada, Department of External Affairs and International Trade, "Chapter Seven - Section A: Agriculture," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 128-141. Section B of this chapter outlines the sanitary and phytosanitary measures related to agriculture, pp. 141-150. A Brief overview of these issues is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, pp. 5-7.

61. Provisions outlining trade in the automotive sector are also outlined in Chapter Three of the NAFTA (Volume I, pp. 43-52). Specifically, Annex 300-A refers to trade and investment of automotive goods in North America. A Brief overview of automotive goods is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, pp. 3-5. Further information on these issues is available in Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Sixth Proceedings on: The Examination of Negotiations for a North American Free Trade Agreement Among Canada, the United States and Mexico and any Other Related Trade Developments, Tuesday, May 5, 1992* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1992).

62. For more details on energy, please see Canada, Department of External Affairs and International Trade, "Chapter Six: Energy and Basic Petrochemicals," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 122-127. A Brief overview of energy and basic petrochemicals is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, p. 5. Further information on Chapter Six is available in Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Issue Number 20 - Fifteenth Proceedings on: The Examination of Negotiations for a North American Free Trade Agreement Among Canada, the United States and Mexico and any Other Related Trade Developments, Wednesday, May 5, 1993* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1993).

63. For more details on government procurement, please see Canada, Department of External Affairs and International Trade, "Chapter Ten: Government Procurement," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 1. pp. 168-205. A Brief overview of energy and basic petrochemicals is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, p. 10.

64. The NAFTA outlines provisions for textiles and apparel in Chapter Three and Annex 300-B (Volume I, pp. 53-99). A Brief overview of the textile sector is also available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, p. 3. Further information on this sector is available in Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Ninth Proceedings on: The Examination of Negotiations for a North American Free Trade Agreement Among Canada, the United States and Mexico and any Other Related Trade*

Developments, Tuesday, June 2, 1992 (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1992).

65. For more details on the "general exceptions" of the NAFTA, please see Canada, Department of External Affairs and International Trade, "Chapter Twenty-One: Exceptions," in *North American Free Trade Agreement: Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, vol. 2. pp. 297-301. Annex II (Volume II, pp. 546-578) of the agreement also outlines "Reservations for Future Measures" in which each country outlines specific issues, such as aboriginal rights that are non-negotiable. Annex III, "Activities Reserved for the State" (Volume II, pp. 579-582), Annex IV, "Exceptions for Most Favoured Nation Status" (Volume II, pp. 583-586), Annex V, "Quantitative Restrictions" (Volume II, pp. 587-603), and Annex VII, "Reservations, Specific Commitments and Other Items" (Volume II, pp. 612-644), all cover a number of other issues that are excluded from the North American Free Trade Agreement. All of these reservations also apply to investment, financial services and cross border trade in services. A Brief overview of these exceptions is available in Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description*, p. 19.

66. In order to understand the intrusiveness of the NAFTA it is only necessary to look at the scope of the agreement. In sum, the NAFTA consists of the following: Part I includes Chapter One, "Objectives" and Chapter Two, "General Definitions"; Part II outlines trade in goods and consists of Chapter Three, "Trade in goods", Chapter Four "Rules of Origin", Chapter Five, "Customs Administration", Chapter Six, "Energy and Basic Petrochemicals", Chapter Seven, "Agriculture" and Chapter Eight, "Emergency Action"; Part III and Part IV contain Chapter Nine, "Technical Barriers to Trade" and Chapter Ten, "Government Procurement" respectively; Part V covers investment and service related measures and includes Chapter Eleven, "Investment", Chapter Twelve, "Cross Border Trade in Services", Chapter Thirteen, "Telecommunications", Chapter Fourteen, "Financial Services", Chapter Fifteen, "Competition Policy, Monopolies, and State Enterprises", and Chapter Sixteen, "Temporary Entry for Business Persons"; Part VI consists of Chapter Seventeen, "Intellectual Property"; Part VII outlines the administrative and institutional provisions of the agreement which include Chapter Eighteen, "Administration of Laws", Chapter Nineteen, "Review of Anti-Dumping and Countervailing Duty Measures", and Chapter Twenty, "Institutional Arrangements and Dispute Settlement Procedures"; finally, Part VII consists of Chapter Twenty-One "Exceptions", and Chapter Twenty-Two, "Final Provisions" which outline the remaining reservations and/or other included measures of the agreement.

CHAPTER 4

Provincial Activity in the International System

Introduction

The evolving role of the provinces in Canadian foreign economic policy can be linked to a number of international and domestic factors. Internationally, the intrusiveness of economic regimes, the proliferation of relations between non-sovereign or semi-sovereign actors, and the impact of global interdependence in the international system have all contributed to greater provincial participation in the policy process. Domestically, the regional political economy of Canadian federalism, and the system of executive federalism designed to manage intergovernmental relations, have also encouraged independent provincial initiatives. In terms of international trade it is important to clarify the specific domestic constitutional provisions and practices that have empowered the provinces in the formulation of Canadian foreign economic policy. It is also important to examine previous provincial activity in the international system and past trade disputes involving such issues as provincial liquor boards and softwood lumber. In doing so, it becomes clear that internal and external conditions existed before the implementation of the NAFTA that promoted provincial interest and activity in the international system. At the same time, however, there is also considerable evidence to suggest that the intrusiveness of the North American Free Trade Agreement has further reinforced traditional regional divisions within the domestic political economy. As the remainder of this study suggests, the NAFTA also

provides greater opportunities for the provinces in terms of pursuing future linkages with other actors in the international system. These developments have not only placed a growing number of provincial economic concerns on the domestic policy agenda but have also changed the manner in which provinces deal with other governments in Canada and elsewhere in the international community. As the intrusiveness of economic regimes such as the NAFTA continues to persist it will become increasingly more difficult to define a boundary between domestic and international policy and politics. At the same time, these developments will also eliminate the conception that federalism ends at the Canadian border.

Free Trade and the Issue of Provincial Jurisdiction

Academic interest in the external activity of the provinces is not a new development in the Canadian foreign policy literature. In fact, as will be noted shortly, these issues began to gain attention during the 1960s as Quebec aggressively promoted a role for itself in the international community. Further interest was also developed as some of the larger provinces followed Quebec's example and began to pursue independent international economic initiatives. Kim Nossal was one of the first to categorize the various interests that motivated the international activity of the provinces.[1] In addition to distinguishing between Quebec's interests and those of the other provinces he noted that the provinces were primarily concerned about constitutional, socio-economic, functional, and bureaucratic interests. In terms of constitutional issues, Nossal suggested that the provinces have always had an interest in defending, and expanding, areas of domestic jurisdiction in relation to the federal government, even in matters relating to foreign affairs. In relation to socio-economic issues the provinces have an interest in pursuing international initiatives dealing with such areas of provincial jurisdiction as the provincial economy, resource development, health, or education. Geography and the need to coordinate functional issues, such as law enforcement, waterways management, fire-fighting arrangements, and road, highway, and bridge services, also "propel" the provinces into external activity. Finally, Nossal believes that the growth of bureaucracy and expertise related to these issues at both levels of government further exacerbates the desire of some provinces to pursue independent policy initiatives in the international system.

Although functional concerns are only discussed in a cursory manner, and bureaucratic interests are more explicitly detailed in subsequent chapters, the following discussion explores constitutional, socio-economic considerations, and Quebec's nationalist approach to international affairs in greater detail. In terms of constitutional issues it is clear that the inclusion of areas of domestic jurisdiction in the GATT, the FTA,

and the NAFTA, create unique difficulties for most federal states in the international system. In Canada, this is evident in the problems created for federal policy makers due to the lack of a clear definition of jurisdictional authority on international economic matters in the Canadian constitution. In the past, given federal control over tariff measures, Canadian international economic obligations rarely overlapped into areas of domestic jurisdiction. The expanding "intrusiveness" of economic regimes, however, indicates that federal-provincial relations are becoming increasingly more important in terms of Ottawa's ability to enter into international agreements. As one observer has noted, "meeting our evolving international obligations within the confines of Canada's complex and imprecise jurisdictional divisions of powers between federal and provincial governments can be a source of intergovernmental and inter-regional tension within Canada and create difficulties with our trading partners."[2] As a result, the broad scope of this issue area is such that trade policy "is now as much a provincial concern as it is a federal concern. This is not only the case for exports and market access issues; but also for the conduct of provincial policies."[3]

Despite the view of some authors that provincial participation in the international community is a threat to Canadian sovereignty, the provinces have a legitimate constitutional right to pursue global initiatives in specific areas of jurisdiction. There is considerable debate in Canada, however, over how extensive this right is and how much federal control there should be in the area of foreign economic policy.[4] In the case of the treaty making power, for example, the constitutional practice that evolved as Canada gained control over treaty rights was such that while the federal government had full power to negotiate and enter into treaties it did not have the right to implement them in areas of provincial jurisdiction. The key to this constitutional reading was a 1937 decision by Lord Atkin of the United Kingdom's Judicial Committee of the Privy Council (JCPC), which at the time was the final judicial step for Canadian constitutional legal challenges. The impact of the *Labour Conventions* case, on appeal from the Supreme Court of Canada, is clear in that it "denies Ottawa plenary power in matters relating to treaties. Thus, to the extent the federal government pursues international economic strategies that involve treaty arrangements, there is a possibility that it will be frustrated by an inability to fully perform its obligations."[5] The decision was widely criticized at the time as preventing a strong central response to situations that were critical for the economic well being of the country. Despite this, the Supreme Court of Canada, which now controls all constitutional judicial proceedings, has not used *Labour Conventions* as a foundation for consistently interpreting legal cases in favour of one level of government over the other. In fact, throughout Canada's constitutional evolution the "Court has been sensitive to the need of maintaining a balance between federal and provincial authority."[6] Further, even if the Supreme Court did

re-open *Labour Conventions* it is highly unlikely either level of government would gain full control over the implementation of international economic arrangements. Instead, it is more likely that the judicial balancing act would continue depending on the specific issues involved. As Gerald Morris noted in his testimony to the Senate Committee on Foreign Affairs, which was studying the Canada-United States Free Trade Agreement, "it is not the general treaty-making power that is at stake, but the competence of Parliament to implement a treaty in a specific field, and [the courts] would judge any argument on the basis of the field they are dealing with and will stick to that field."[7]

In addition to the constitutional uncertainty surrounding the right of the federal government to enter into treaty obligations is the further judicial question of which jurisdiction has the right to regulate trade and commerce in Canada. Whereas section 91(2) gives Parliament the exclusive legislative authority in the regulation of trade and commerce, the provinces have jurisdiction over property and civil rights which includes the regulation of contracts through which trade is conducted. As a result, judicial rulings on these issues have reflected this incongruity. In the *Citizens Insurance Company v. Parsons* case (1891), for example, the JCPC defined Ottawa's jurisdiction as including international trade, interprovincial trade, and general regulation of trade related to the whole Dominion, effectively limiting the provinces to the regulation of intraprovincial transactions. In other words, if a provincial trade measure, such as a marketing board, had an impact on the regulation of transactions on out-of province products it would be technically invalid.[8] The major difficulty with evaluating trade and commerce challenges, however, is the tendency to focus on the nature of the transactions regulated and the purpose of the regulation as opposed to its impact on trade. A regulated product may be consumed locally or it may enter international trade. As a result, the jurisdiction for that product then becomes divided and it becomes increasingly more difficult to determine which level of government maintains regulatory power. Although two Supreme Court decisions, the *CN Transportation* case (1983) and the *General Motors* ruling (1989), appear to reflect the Court's belief that the federal government should have access to the tools necessary for managing the national economy it has become clear in subsequent rulings that a renewed federal dominance is unlikely. The Court has "stressed that section 91(2) must not be read so as to upset the balance between the federal and provincial governments. It reaffirmed that there was no federal power to regulate a single trade or business. And, it indicated that issues... must be determined on a careful case by case basis."[9]

A third means by which the provinces could challenge the authority of Ottawa on issues of international economic policy is the "Peace Order and Good Government" (POGG) power. The most relevant judicial interpretation of the POGG power was the

1988 *Crown Zellerbach* decision. In that case the Supreme Court upheld federal legislation dealing with the dumping of substances at sea "even though the definition of 'sea' included provincial internal waters, and some kinds of dumping might have no direct effect on expressly conferred federal jurisdiction such as fisheries."[10] In other words, *Crown Zellerbach* implied that the POGG power enabled Ottawa to bring under federal control areas of provincial authority not explicitly defined at the time of Confederation if these issues were deemed to be matters of "national concern." The Court, however, did set out conditions that federal legislation must meet in order to fall under the guidelines of "national concern." Specifically, "it must have a 'singleness, distinctiveness and indivisibility that clearly distinguishes it from matters of provincial concern' and, as well, must have a scale of impact on provincial jurisdiction that is reconcilable with the fundamental distribution of legislative power under the constitution."[11] Most observers believe these stipulations do not provide Ottawa with the necessary power to use the POGG clause as a means of excluding the provinces from issues of international economic policy. One possible scenario would be to have the Supreme Court develop a "test" in order to determine if a particular issue was of significant "national concern" to merit regulation under POGG. To date, no such ruling has been made and without guidelines defining the boundaries of "national concern" many believe that federal reliance on the POGG power would grant Ottawa a wide degree of unlimited authority that would "not be reconcilable with the basic allocation of legislative authority between Parliament and the provincial legislatures."[12]

The judicial interpretations of the Supreme Court of Canada have maintained an uneasy balance between federal and provincial powers. Yet "the jurisprudence surrounding the ongoing interpretation of constitutional law is in constant flux, and while a strong propensity towards federal balance seems to have prevailed over time, one cannot rule out future interpretation."[13] It is also valid, however, to question whether the courts will be involved in the continuing constitutional evolution of Canadian federalism. Given Canada's predominance with all things constitutional, both levels of government have consistently indicated a desire to implement political and bureaucratic, rather than judicial, processes of dispute resolution. Further, the existence of federal constitutional power does not always guarantee its use. It takes "political will to flex legal muscles, and it is not only in Canada where the federal government has at times stepped back from pushing its perceived jurisdiction to the limit."[14] While the federal government appears to control a fair amount of contemporary jurisdictional influence "the combination of factors here described, when combined with the evolution of executive intergovernmental relations so well

entrenched in recent decades, has meant that the federal-provincial dimension has become increasingly more complex and more prominent."[15]

The domestic legal interpretation of these issues is further complicated by international economic agreements negotiated by the Canadian government. Some suggest that these international commitments entitle the provinces to an expanded role in the formulation of Canadian foreign economic policy. As a signatory to the GATT in 1947 Canada bound itself to the agreement's "federal state clause." This section, article XXIV(12) states that "Each contracting party shall take such *reasonable* measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territory."[16] Many observers argue that the vague wording of the provision created a degree of ambiguity regarding the legal validity of article XXIV(12) in terms of provincial compliance. Some members of the GATT "have sought to interpret the meaning of 'reasonable measures' as requiring the federal government to use all available constitutional power to obtain provincial compliance, while Canada and other federal countries have argued for the inclusion of such 'federal' clauses to prevent international agreements from compromising their internal federal structures."[17] The Canada-United States Free Trade Agreement also has a "federal-state clause" but it is generally considered to be much more binding than the federal state clause of the GATT. Article 103 of the FTA stipulates that the "parties to this agreement shall ensure that *all necessary measures* are taken in order to give effect to its provisions, except as otherwise provided in this Agreement, by state, provincial and local governments."[18] Admittedly, the FTA does not dictate what a party must do to meet these obligations but "it is widely agreed that this language is stronger than the GATT's 'reasonableness' standard."[19] Article 105 of the North American Free Trade Agreement also incorporates the "all necessary measures" language of the FTA but it remains to be seen whether or not this will present a significant barrier to provincial compliance in the future.

Provincial Economic Concerns - Expanding the International Agenda

Despite the fact that the provinces have a legitimate constitutional right to pursue economic initiatives at the international level most are content to let Ottawa represent their interests abroad. At the same time, however, Ontario, Quebec, Alberta, and British Columbia, have consistently sought a more active role in the policy process during the post-war period in the belief that Ottawa has traditionally bargained away or marginalized issues of provincial importance.[20] These concerns have been primarily related to federal policy initiatives designed to diversify Canada's export profile and the increasing number of trade challenges

originating from the United States. In the 1970s Canada relied heavily on the export of resource-based products and experienced a growing dependence on the American market. The Trudeau government responded to these perceived problems with the Third Option and the Foreign Investment Review Agency, each designed to limit American influence in the Canadian economy.[21] As NTBs and other domestic protectionist practices came under the scrutiny of international actors domestic jurisdictional issues were also pushed to the forefront of the Canadian trade agenda. American challenges to provincial investment and subsidy programs became popular during this period and the United States sent several diplomatic notes to Ottawa in reaction to the nationalization of American owned potash firms by the Saskatchewan government in 1975-76. The United States also expressed similar concern over Canadian investment practices during Quebec's takeover of Asbestos Corporation in 1979-81. At the same time Washington began targeting a number of provincial assistance programs. Loans and other subsidies in a wide range of sectors, including fish products, pork, softwood lumber, automobile production, and Michelin tires, were also challenged by the United States in a trade strategy that concentrated as much attention on the provinces as on federal government programs.

Not surprisingly, the provinces were extremely critical of these attacks on domestic regional interests. Several provinces even went as far as condemning Nixon's move to initiate an import surcharge in 1971, with Manitoba and Ontario taking the extra step of developing relief programs to further supplement federal compensation packages. The 1970s also marked an increase in provincial activism in specific sectors of the economy. The provinces became outspoken critics of major Canada-United States economic issues, such as the Auto Pact and foreign investment, and oil shortages at both the beginning and end of the decade. Of these issues it was energy that contributed the most to increased tension in the federal-provincial relationship. Several provincial premiers, including Peter Lougheed of Alberta who advocated increased oil and gas exports to the U.S. and Edward Schreyer of Manitoba who advocated reduced exports, took the then unusual step of visiting Washington to personally express their views on energy policy. While the controversy over oil and gas created impressive headlines, Ottawa and the provinces did continue to cooperate in a number of other issue areas. Both levels of government worked closely together on the aforementioned United States countervail duties against Michelin tires and during Saskatchewan's decision to intervene in the potash industry. There was also considerable collaboration during "negotiations with the United States on transit pipelines, location subsidies for automotive plants, and maritime boundaries and fisheries."[22] Although Ottawa often viewed independent provincial economic initiatives with some reluctance the decade of the 1970s marked the beginning of an important change

in the relationship between the federal government and the provinces in matters of foreign economic policy. Not only did the provinces now have the resources and bureaucratic structures in place to participate and articulate provincial interests but Ottawa, in having to respond to these trade irritants and possessing only a limited knowledge of provincial subsidy practices, was left with no alternative but to increase its consultative linkages with its sub-national counterparts.

According to Douglas Brown the provinces' new-found voice on trade policy was important for a number of reasons. Not only did the provinces become more sensitized to the importance of trade to regional economic concerns but there was also a heightened awareness of Canadian trade policy and a desire to express more effectively provincial interests in the domestic policy process. These developments often further complicated the handling of trade matters but there was still only limited federal concern regarding the actual impact of the provinces in this area of policy. Officials were confident that so "long as the provincial role was confined to speaking out on trade matters... it could be managed effectively and was not significantly different from intergovernmental tensions inherent throughout the past two decades in other policy domains where the federal government could in the final analysis, act alone having tested the political winds."[23] As a result, Brown suggests that the "provincial awakening" of the 1970s did not significantly alter the formulation of trade policy in Canada. Formalized linkages between the two levels of government on trade related issues were still limited and it was clear that Ottawa had no intention of institutionalizing a forum for the articulation of provincial international economic demands. At the same time, however, the provinces, recognizing the emerging importance of regional considerations in the formulation of Canadian foreign economic policy continued to push for a more inclusive role in the process.

In response to these pressures Ottawa eventually attempted to institutionalize the interests of the provinces within the federal bureaucracy. Federal officials hoped to develop a "team" approach by re-organizing External Affairs to include a new Federal Provincial Coordination Division. In the words of a former director, "this [was] an 'institutional response to the federal dimension of Canadian foreign policy. It [stood] as the... focal point for contacts with the provinces and [was] the provinces' sympathetic ear within the federal government, bringing to bear a provincial perspective and fighting biases and inertia in the face of provincial aspirations."[24] While the department was originally created to monitor the activities of Quebec, it soon became responsible for keeping the provinces informed of all relevant Canadian international initiatives. It was also expected to coordinate provincial activity and provide assistance for provincial foreign missions. In other words, "the federal government was actually expanding the international involvement

of the provincial governments, while trying to carry the provinces under the federal umbrella to protect sovereignty."[25] As External Affairs, now Foreign Affairs, became more comfortable with the international activity of the provinces, however, the "political" need to monitor these initiatives diminished. As a result, the Privy Council Office (PCO) took control of most responsibilities formerly under the administration of the Federal Provincial Coordination Division and Foreign Affairs now relies on an extensive committee system, which will be discussed in greater detail in a later chapter, to coordinate matters of provincial concern. Foreign Affairs continues to maintain a federal-provincial office, but in the words of one official it is "little more than a man and a boy."[26]

Life Before the NAFTA - Liquor, Lumber, and Federal-Provincial Relations

Prior to the NAFTA there were a number of international trade disputes that contributed to the empowerment of the provinces in terms of independent external policy initiatives. In fact, due to the increasing number of these disputes during the past two decades, and the inability of Ottawa to guarantee provincial compliance, a number of observers still argue for more formalized federal-provincial linkages in matters related to international trade. As Brown points out, where "trade disputes impinge directly on provincial interests or draw one or more provinces as parties into the dispute, relations with the provinces can be critical to the successful resolution of a dispute."[27] At the same time the "difficulty in maintaining a common position and the lack of means of reaching binding positions in the domestic side of the equation in Canada has also raised questions about Canada's ability to conduct effective trade relations."[28] Two examples of these concerns involve the issues of provincial liquor boards and softwood lumber. In the past, these disputes were cited as clear examples of the increasing power of the provinces in the domestic policy process. Although these issues are only two of a number of other on-going disputes, involving such sectoral interests as Canadian pork, raspberries, steel, and beer, they provide considerable insight into the role of the provinces in the formulation of Canadian foreign economic policy even before the implementation of the NAFTA.

Wines and spirits have been the focus of several GATT dispute panels. The most significant confrontation involved charges by the European Community that Canada had not lived up to its obligation of liberalizing trade in alcoholic beverages. The main issue of the challenge was a 1979 Statement of Intent signed by the Canadian provinces which dealt with the practices of provincial liquor boards that regulated the sale of alcohol. At the completion of the Tokyo Round the Statement of Intent was considered a triumph as it removed the Canadian federal government from its role as a middleman in the sensitive area of trade in alcoholic beverages. For the first time an issue of complete provincial

jurisdiction had been successfully negotiated in a multilateral forum. In the years following the agreement, however, many European states began to question whether or not the provinces, especially Ontario, were living up to the spirit of the Statement of Intent. Ontario's practice of protecting local wine industries, through differential mark-ups for domestic and imported beverages and the listing, handling and distribution of imported products, was perceived to be a violation of the Statement and was at the center of the European challenge. After lengthy discussions both parties finally decided to submit the dispute to a GATT panel which reported its findings in October of 1987. The key to the dispute was the GATT's "federal state clause." Canada presented the argument that its domestic constitutional framework would not allow it to force compliance in an area of exclusive provincial jurisdiction. Europe, on the other hand, offered the opposite side of the issue. After hearing the case the GATT panel ruled in favor of the European Community but gave Canada a year to settle the internal matter to its own satisfaction. Canada and Europe came to a decision on December 20, 1988. The agreement "provided satisfaction to the EC complaints that centered mainly on wine. Beer was covered, but only to the extent of freezing existing price mark-up differentials and extending the principle of national treatment to listing practice."[29] Provincial beer distribution was not included in the final agreement.

The liquor boards dispute is a good example of the impact of domestic and international variables on Canadian trade policy. Internationally, the federal government was concerned about broader problems that might arise if the European disagreement was not solved quickly. Domestically, Ottawa worried that a lengthy dispute, centering on wine, and mainly affecting B.C. and Ontario, would disrupt beer distribution which was extremely important for the other provinces in Canada. The consultative process both at home and at the GATT played a significant role in the resolution of the dispute. Brown, however, believes the real key to the liquor boards issue was why the provinces failed to abide by the original Statement of Intent in the first place. Scott Fairley suggests that the problem was linked to "the absence of a continuing institutional framework that led the provinces to renege on their commitments. 'The immediacy of constant local economic and political pressures' prevailed over the more distant considerations of trade policy, once the Tokyo Round consultations concluded."[30] Regardless, the dispute raised questions in the international community about Canada's commitment to liberalized trade. It also demonstrated the problems associated with the absence of an institutionalized process of consultation that would ensure provincial compliance with trade commitments. The lack of such a mechanism allowed domestic politics to disrupt the trade goals of both the federal government and other states in the international system. More importantly, however, the

liquor board dispute illustrated the relative freedom of the provinces to act in matters of trade in contrast to the limitations placed on Ottawa as a result of binding international trade agreements.

Although unrelated to the GATT, softwood lumber is another example of a trade dispute directly involving the jurisdictional interests of the provinces. For the most part, this dispute centered on complaints by the United States regarding stumpage regimes in the major lumber exporting provinces of British Columbia, Alberta, Ontario, and Quebec. The Americans had been losing market share to Canadian lumber for years and launched a countervail suit alleging subsidies in Canada. The United States lost an initial legal challenge in 1983 but launched another in 1986 under different domestic political circumstances which "included the heightened concern over the trade deficit in the U.S., a consequentially protectionist-oriented Congress,... political pressures on the U.S. trade remedy process..., and the leverage of Congress on the U.S. Administration and Canada in the start-up on bilateral negotiations towards a free trade agreement."[31] Due largely to this protectionist atmosphere the United States International Trade Commission (ITC) ruled in 1986 that the Canadian lumber industry was subsidized. This left the Canadian government with several difficult options. If Ottawa ruled the finding invalid it ran the risk of derailing the on-going Canada-United States free trade negotiations. If it allowed the United States to implement the countervail suit it would also set a dangerous precedent for other Canadian resource exports.[32] The other alternative was to attempt a negotiated settlement of the dispute. Ottawa could either negotiate a suspension agreement, which would allow Canada to take measures nullifying the effect of the countervailing duty, or it could reach a termination agreement that would stop the American legal proceedings. Canada managed to avoid legal action by signing a Memorandum of Understanding in December of 1986. In the MOU Ottawa agreed to collect a 15 per cent export charge on lumber shipped to the United States and also made a commitment to consult with the Americans regarding any provincial efforts to replace the export tax with other charges. This kept the tax revenue "in Canada, while having the same effect on Canadian producers of an import duty. While not mentioned in the MOU, the implementing legislation in Canada stipulated that the export charge revenue, minus administrative costs, would be returned to the province of the originating shipment."[33] In sum, the status quo was maintained but the Americans gained a political victory with what they portrayed as the submission of the Canadian lumber industry.

The decision to pursue a termination agreement was intensely debated in Canada and dominated the 1986 Annual First Ministers Conference in Vancouver. During the conference Ottawa was faced with the unexpected task of building provincial consensus on

an international issue being actively negotiated. By the end of the meeting the federal government had managed to gain the consent of nine of the provinces for the termination agreement. Ontario, however, refused to support the Canadian commitment. David Peterson, the premier of Ontario, questioned the constitutional validity of the export tax and argued for further legal challenges based on "the merits of the case, rather than what his government perceived to be the capitulation to American political pressure to settle out of court."[34] The Canadian lumber industry also complained that they had been excluded from the initial negotiation process and that the agreement could have a devastating impact on the forest sector. As with the issue of provincial liquor boards the lack of a cohesive front on the 1986 MOU offers a good indication of the pressures faced by Ottawa in trying to negotiate international economic commitments in areas of provincial jurisdiction. With softwood lumber, not only were the "chief measures in dispute provincial policies, but the provincial crown owned the resources in the first instance. The government of British Columbia, the main culprit in the eyes of American interests, and with the most to lose from a countervailing duty, had the ability and indeed threatened to cut an independent deal with the U.S. lumber interests. These threats went a long way to undermining any Canadian position on fighting the good fight before the Department of Commerce."[35] The content of the termination agreement also removed any incentive the provinces may have had in challenging the constitutional validity of the federal legislation implementing the MOU due to the fact that any revenue from the export tax surcharge was to be paid back to the provinces.

The successful negotiation of the MOU, however, did not mark the end of the softwood lumber dispute. Following the agreement Ottawa found it difficult to develop a uniform approach to the MOU as not all provinces had similar crown forest management practices. These difficulties were further exacerbated by Ontario's decision not to participate in the export surcharge agreement. Faced with these problems, and pressure from the Canadian lumber industry, Ottawa exercised its option to abrogate the MOU on September 4, 1991. In its place most provinces immediately raised timber fees on approximately 95 per cent of all Canadian lumber exports. These increases were still less than American timber prices, however, and the large and powerful lumber lobby in the United States, led by the Coalition for Fair Lumber Imports, continued to pressure Washington to limit imports of Canadian softwood products. Further complicating the dispute was the fact that American efforts appeared to have little to do with the sale of softwood lumber in the United States. In fact, most members of the coalition produced very little lumber. Other than one or two prominent companies the majority of participants in the lobby were involved in the manufacture of paper products. What these companies

really wanted was to create the perception that their lumber was worth more in an attempt to raise stock prices. According to Pat Carney, the then Canadian International Trade Minister, the United States Commerce Secretary, Malcolm Baldrige, made it clear that "U.S. companies wanted higher timber prices because they were having trouble with the banks."[36] Baldrige suggested that timber values were becoming an important aspect of forest company financing and higher prices, as opposed to the actual sale of lumber, helped these producers persuade bankers and investors that their companies were worth more than in the past. To make matters worse for Ottawa, evidence was also uncovered which suggested that the American lumber lobby was working closely with several provincial governments during the 1986 MOU negotiations. The coalition, for example, knew that the recently elected Social Credit government in British Columbia, led by Bill Vander Zalm, wanted to ensure that any revenues generated by export duties were returned to the province. One observer even suggested that Vander Zalm, and then B.C. Forests Minister Jack Kempf, worked behind the scenes for the American lobby providing information and briefing coalition members on all aspects of the Canadian negotiating strategy. In the end, "the lumber treaty was signed because British Columbia... decided it wanted a deal rather than see the lumber taxes paid to the U.S. government."[37]

The political motives of domestic interests in both Canada and the United States played a significant role in sparking a new trade war following the termination of the MOU in 1991. In March of 1992 the United States Commerce Department responded to the Canadian position by implementing a 14.48 per cent provisional duty on all softwood lumber entering the United States. The duty was later lowered to 6.51 per cent. A ruling by the United States International Trade Commission in June of 1992 affirmed the decision to charge timber imports on the grounds that Canadian softwood lumber "injured" American sectoral interests. Following the ITC decision Ottawa decided to take the issue before the binational dispute panel that was part of the new FTA. The panel, which consisted of representatives from both countries, ruled on May 6, 1993, that the ITC had not properly examined the issue of Canadian subsidies and was ordered to re-calculate its 6.51 per cent duty. A second panel, which was convened to rule on the separate issue of whether or not Canadian imports were "injurious" to the American lumber industry, also ruled against the ITC and sent the matter back to Washington for further evaluation on July 26, 1993. The ITC responded by raising the import duty to 11.54 per cent on September 17, 1993. By January 6, 1994, the Commerce Department bowed to the pressure of the binational panels and removed all duties on Canadian softwood lumber.

The American lumber lobby was not finished. By April 6, 1994, it had convinced Washington to move the issue to the last appeal option available under the FTA. Under

direct pressure from the coalition, United States Trade Representative Mickey Kantor announced that an "extraordinary challenge" would be filed disputing the panel rulings on the grounds that two of the three Canadian arbiters were biased as they worked for law firms that represented Canadian lumber interests in the past. The extraordinary challenge, which had been used only twice before in the five year history of the FTA and could only be implemented in case a panel exceeded its mandate or jurisdiction, split on national lines voting 2-1 thereby upholding the previous decisions. This effectively ended the implementation of duties on softwood lumber, but the American lobby vowed the fight would continue. On September 14, 1994, the coalition filed a motion in the United States Court of Appeals alleging that the dispute panels, which consisted of jurists from both Canada and the United States, were a violation of American sovereignty guarantees. At issue was the money collected from Canadian exporters as a result of the numerous duties implemented by the United States Commerce Department. Under the terms of the panel decisions this money, which came to a total of close to $800 million, was to be returned to Canada. In filing suit the coalition hoped to regain these funds, but some observers have suggested that the American lobby damaged its relationship with Washington by initiating its latest legal challenge. "Although the American government has yet to respond formally, it can hardly support a court case alleging it negotiated a trade pact that violated the U.S. Constitution." In fact, many believe that the "Canadian and U.S. governments are likely to be allies in fighting for a dismissal of the constitutional challenge."[38] Canadian officials have also dismissed the legal validity of the action. According to one lawyer representing Canada on the softwood case, "there have been dozens of trade cases but a challenge like this has never arisen before... [and] that ought to say something."[39]

The events of the on-going softwood lumber dispute provide considerable insight into federal-provincial relations and the formulation of Canadian foreign economic policy. As Brown suggests, "the federal government cannot dictate terms to the provinces [and] neither can it create consensus where it does not exist."[40] This not only limits the options available to the federal government when negotiating international agreements but the lack of federal-provincial unity also reduces Canadian strength at the bargaining table. There are those who believe, for example, that the previous GATT liquor board disputes, which were not resolved until 1988, contributed to the American position on softwood lumber. Washington was aware of the lack of provincial compliance with previous GATT obligations and chose a "divide and conquer" approach to the softwood lumber negotiations. In other words, both the coalition and Washington knew that regional interests in Canada could be exploited in their favour, especially in the absence of an effective means of guaranteeing compliance in areas of provincial jurisdiction. While the

dispute panels of the FTA may have finally provided a means of weakening the influence of the lumber lobby in Washington, it only came at the end of a long and expensive battle.

Provincial Sectoral Interests and the NAFTA

Many of the issues discussed to this point are largely unrelated to the North American Free Trade Agreement. It is clear, however, that the evolving intrusiveness of the international system has had a significant impact on the previous external activity of the provinces. Specifically, globalization has renewed jurisdictional questions regarding international trade and empowered provincial governments in terms of sub-national economic concerns and previous trade disputes. There is nothing in this analysis to suggest that the NAFTA will do anything to reverse these previous developments. In fact, when the provisions of the North American Free Trade Agreement are examined, as they were in chapter three, it is clear that the NAFTA imposes even more restrictions on federal policy areas than the Canada-United States Free Trade Agreement. The content of the NAFTA has already been discussed, but it is important to understand the specific impact of these provisions on the regional political economy of Canadian federalism. After all, the key exports of the four most active Canadian provinces, namely British Columbia, Alberta, Ontario, and Quebec, are all included in the agreement. Upon closer analysis, however, there is little evidence to suggest that the NAFTA will do anything to diversify the traditional sectoral interests of the provinces.

In the case of British Columbia the key industries affected by the new agreement are once again related to the forestry sector. Mexican tariffs have already been lifted on such products as spruce, pine, and fir lumber, softwood mouldings, shakes and shingles, newsprint, and chemical pulp. Provincial officials also believe that the Mexican market for pulp products will continue to grow by as much as 50 per cent during the next ten years and that demands for forestry equipment and other related services could exceed $80 million by the turn of the century. In addition, British Columbia also expects to benefit from greater liberalization of agri-food products. Raspberries and blueberries, both of which have been the focus of trade disputes in the past, are included in the NAFTA. The elimination of duties on seafood products are expected to create new opportunities for provincial exporters in a market where over one million tons of salmon and shellfish are consumed annually. While the Mexican market is relatively small, "improved access should allow Canadian seafood producers to do well. In addition, good market prospects exist in fish harvesting and processing technology and equipment."[41]

British Columbia has traditionally enjoyed a more diversified trade relationship with the Pacific Rim than its other provincial counterparts. There is evidence, however, to

suggest that the North American market is becoming increasingly more important for the economic interests of the province. According to current statistics trade with Asia has dropped dramatically since 1990, the year before the New Democratic Party took office. In that year Pacific Rim countries accounted for 38 per cent of British Columbia exports while approximately 41 per cent of provincial products went to the United States. By October of 1994, however, exports to the United States had increased to 55 per cent while Asia was reduced to 34 per cent of British Columbia's market share. Further, despite a much publicized tour of Asia by Premier Mike Harcourt in 1991, the province failed to diversify its trade relations with Asia and Japan continues to control 71 per cent of British Columbia's exports to the region. To make matters worse British Columbia's dependence on the forestry sector creates other potentially long-term economic difficulties for the province. Not only is the domestic supply of wood fibre continuing to diminish, but the province is facing the threat of future low cost competition from Russia and Chile in a sector traditionally targeted in international trade disputes. British Columbia has made strides in developing new "niche" markets in the technology sector, but high provincial corporate and personal taxes hamper the inflow of skilled professionals and international investment. As Jock Finlayson, vice president of policy and analysis for the Business Council of British Columbia has suggested, "the province may be a great place to live but it's not so great a place to grow a business."[42]

Unlike British Columbia the main sectors of the Alberta economy affected by the NAFTA are energy and agriculture. The Mexican oil and gas industry is primarily excluded from the new agreement, but provincial officials believe there are still considerable opportunities for Alberta businesses providing equipment and services for the state owned oil company (PEMEX). Under the NAFTA Canadian companies are now eligible to bid on service and drilling contracts. Tariffs have also been removed on a wide range of industrial equipment including well-displacement pumps and filtering and purifying supplies. According to the federal government PEMEX plans to spend close to $23 billion over the next four to five years in an attempt to update and maintain its equipment after almost a decade of minimal purchasing.[43] In addition, Alberta is also expected to benefit from the liberalization of agri-food products, especially in terms of livestock and grains. Mexico imports close to $5 billion a year in agricultural and food products and, given the differences in climates between the two countries, Canadian grains and oilseeds are expected to become an important part of the new trilateral trade relationship. The limited availability of water and arable land in Mexico also limits the country's ability to be self-sufficient in livestock. Alberta is expected to benefit from the growing demand for red meats, pork, and breeding livestock.

The improved market access created by the NAFTA is also expected to reinforce Alberta's dependence on North American trade and investment. Following the lead of its western neighbour, Alberta has long attempted to emulate the apparent success of British Columbia in taking advantage of its proximity to Asia and diversifying its trade relations with the Pacific Rim. Provincial trade representatives have actively pursued these markets and Premier Ralph Klein took a much celebrated provincial trade tour of Asia shortly after his election victory in 1993. While Klein visited most of the significant economic powers of the region, it was soon obvious that new business opportunities remained limited for provincial entrepreneurs. In fact, many observers felt the most symbolic moment of the trip was the Premier's attempt to sell Drummond beer, long rumoured to be a Klein favourite, to the Japanese.[44] As one provincial trade official made clear, "it is highly unlikely that Alberta will ever enjoy any substantial economic success in Asia. Whether we like it or not we are too far away and have little of real value to offer their consumers."[45] As with British Columbia, Alberta's diminishing trade with Asia and the successful negotiation of the NAFTA have both reinforced the traditional regional economic interests of the province. Agriculture and livestock remain extremely important to the provincial economy and energy related concerns continue to maintain an almost mythical status in Alberta.[46] The NAFTA not provides some new opportunities for Alberta exports to Mexico, it also reinforces the province's long standing position in the Canadian regional political economy.

In comparison to the western provinces Ontario has a much more diversified economy. It therefore has a number of key export areas influenced by the provisions of the NAFTA. By 1998, for example, "Mexican tariffs on most auto parts, nickel and nickel products, maple and beech lumber and a wide variety of industrial and electrical equipment will disappear." In addition, "most tariffs on telecommunications machinery and equipment will be lifted immediately... [and] financial institutions and consulting services will also receive improved access to the Mexican marketplace."[47] The sector with the greatest potential benefit for Ontario, however, is automobiles, parts, and other transportation equipment. As previously noted, Mexico has pledged to open its historically protected auto industry by 50 per cent immediately and to remove all tariffs by 2003. Provincial officials note that the Mexican market has an annual growth rate of close to 7 per cent in this sector and suggest that rapid urban modernization in Mexico should further increase the demand for automobiles and other transportation equipment. Ontario is expected to benefit from the need for reliable and environmentally clean urban transit equipment, locomotives, steel rail, track machinery, and the repair and overhaul of rolling stock, buses and trucks. Mexico's reliance on imported technology also has the potential to

improve market access for provincial businesses in the telecommunications sector. As Mexico attempts to upgrade its infrastructure and develop its manufacturing capability provincial suppliers of electrical components, and computer software should find a new and lucrative market for their products. The deregulation of the telecommunications sector should also open opportunities for private investment in areas such as cellular phones and fax technology, the construction and administration of microwave earth stations, and electronic mail and data transmission services. Finally, the modernization of the Mexican economy will also require sophisticated banking, insurance and securities services, all of which are in abundant supply in Ontario.

Ontario, while more dependent on the United States market than the western provinces, has a more diversified economy than either British Columbia or Alberta. In addition to sectoral opportunities involving automobiles and transportation equipment, telecommunications, and financial services, the NAFTA improves access for industrial machinery and technology, including machine tools, metalworking equipment, and packaging and wrapping machinery. In addition, as Mexico's standard of living continues to improve the province hopes to benefit from the expected demand for specialty food items, such as cookies, biscuits, frozen potato products, bottled water, snack foods, and other microwaveable food items. The fact that Ontario relies on more than one or two primary exports contributes to its dominant role in the Canadian domestic economy. At the same time, however, Ontario's diversification also directly reinforces its economic role in Canadian federalism. The NAFTA further liberalizes sectors traditionally important to the Ontario economy, especially in terms of manufacturing. While the NAFTA may open new economic opportunities for provincial entrepreneurs, it is highly unlikely that these industries will eclipse those industries already well established in Ontario. As a result, NAFTA will continue to strengthen the already existing economic regionalism of Canadian federalism.

As with Ontario there are several sectors of the Quebec economy that are likely to be affected by the NAFTA. Quebec, like British Columbia is heavily dependent on the pulp and paper industry and the reduction of Mexican tariffs in this sector is expected to benefit provincial producers of newsprint, coated and uncoated paper, chemical pulp, specialty papers, and softwood lumber. Quebec is also expected to take advantage of new opportunities created from tariff reductions on transportation and environmental equipment. The province has a number of companies involved in the transportation sector and several Quebec firms have already demonstrated expertise in environment control technologies. There are several provisions of the NAFTA, in addition to the side deal on the environment which will be discussed in detail shortly, which place greater environmental controls on

Mexico thereby creating a demand for anti-pollution equipment and other related services. Specifically, the Mexican government will require products for industrial and municipal waste water treatment and other equipment for controlling air pollution. In addition, Quebec firms are expected to make gains related to improved access to the Mexican market in terms of software services, industrial equipment, specialty food products, consulting engineering, and other professional services.

Economic regimes such as the NAFTA and the newly created World Trade Organization (WTO) of the GATT also create new challenges to those sectors of the Quebec economy long protected from international competition. While other provinces face similar pressures provisions related to the textile industry, in addition to creating new opportunities for Quebec, will expose existing manufacturers to less expensive products from within the North American market. In addition, even though agriculture was generally excluded from the NAFTA, the successful completion of the Uruguay Round of the GATT marks the beginning of the end for Quebec's heavily protected dairy and poultry sectors. The negative reaction of Quebec farmers has been intense and there is a prevailing attitude within the province that these international commitments should not apply to sectors considered to be indigenous to the culture of Quebec.[48] As in France, where farmers rioted in the streets during the final stages of the GATT negotiations, it will take considerable political will on the part of provincial politicians to carry out these obligations and to avoid new subsidies, tax breaks or other protectionist measures. While these measures create new challenges for provincial producers, they also reinforce the traditional sectoral interests of Quebec and in doing so further entrench the province's historical role in the Canadian political economy.

Quebec Nationalism and the NAFTA

As Nossal suggests, and unlike other provinces, Quebec's long and controversial history of activity in the international system has not been limited to economic initiatives. In fact, Quebec has been historically "impelled into international activity by a desire to project abroad some sense of the province's cultural and linguistic attributes that distinguish francophone Quebecois from other Canadians." There is no question that Quebec's "external impulses are, very simply, *nationalistic*, and its external interests as a result tend to be overlaid by *la question nationale*."[49] Over the years Quebec has developed close ties with France and other European countries and provincial state visits to foreign capitals have been numerous. Put simply:

> Quebec wants to make an international impression as an independent actor, both to satisfy its calculated requirements for economic health and well being, cultural

> continuity and educational development, and to fulfill the mission of the Parti Quebecois government of making Canada give in to *le fait francais*. Hence, Quebec [has traditionally] challenged the government of Canada, especially in the francophone world, demanding to represent internationally the francophones of North America.[50]

The issue of Quebec nationalism was not a main focus of the NAFTA negotiations. Provincial international initiatives of the past, however, have contributed to the already strong regional identity of Quebec. Quebec nationalism may not be the main motivation behind its current international economic agenda, but this issue further limits the options available to the federal government in terms of both domestic and international economic policy.[51]

The first international agreement signed by Quebec was an educational exchange negotiated with France in 1965. Although the agreement was relatively minor it quickly became a symbolic victory for the provincial government. In fact, many Quebecois viewed the entente as a signal of Quebec's independent status in the international community. Such claims "challenged the position of the federal government in Ottawa, which had consented to the entente in the (perhaps naive) expectation that it would be a functional agreement with no further political ramifications."[52] Quebec continued to develop its Atlantic linkages throughout the 1960s and it was this "French connection" that provided the symbolic legitimacy the province was looking for with its external activities. The French president, Charles de Gaulle, was especially supportive during this period and appeared to enjoy publicly embarrassing the Canadian government. The most famous incident was de Gaulle's 1967 Montreal speech in which he stated "*tout le long de ma route, je me suis trouve dans une atmosphere du meme genre que celle de la Liberation*", which in rough translation meant "from Quebec City to Montreal I have found an atmosphere not unlike that of France during its liberation from the Nazis." At the end of the speech de Gaulle shouted "*Vive Montreal, vive le Quebec, vive le Quebec libre, vive le Canada francais, vive la France* "[53] Quebec's interest in external affairs increased even further with the election of the Parti Quebecois (PQ) in November of 1976. As the provincial government was trying to influence the results of an anticipated independence referendum it began using international activity as a means of demonstrating its autonomy. The Quebec government "tried to project the image of an independent international actor by attempting to acquire the symbols of statehood, such as diplomatic immunity for its representatives abroad, or 'participating-government' status at international summits."[54] It began making statements on human rights issues, such as South African apartheid, and strongly criticized federal policy in matters judged to be harmful to Quebec interests. In fact, by 1979 the provincial

government had a full foreign policy program for an independent Quebec which included, among other things, a commitment to NATO and NORAD and even the possibility of Quebec membership in the Commonwealth.

There were two significant developments that caused Quebec to re-evaluate its international participation in the 1980s. The first was the diminishing support of the French government. Quebec's early recognition was directly linked to de Gaulle's goal of an independent role for France in the western security arrangement. Following de Gaulle's death, Paris began to question the legitimacy of Quebec's activities and was wary of further damaging its deteriorating relationship with Ottawa. Following the 1980 referendum the French government fully withdrew its international support for Quebec and by 1983 France was publicly rebuffing the Levesque government, most notably in its attempt to secure an invitation to a francophone summit as a full participating government. Concern expressed by the United States over the province's separatist agenda also caused Quebec to re-evaluate its international participation during this period. Washington made it very clear that they saw a unified Canada as essential to continental security and made vague threats of removing investment from the province if "damaging" activity continued. Once in power the PQ government limited inflammatory statements of provincial nationalization and began to "aim much of their external diplomacy at trying to reassure the American business community that the prospect of an independent Quebec was no cause for alarm, and that the transition to independence would be marked by stability and continuity."[55] The subsequent defeat of the PQ by the provincial Liberal party led by Robert Bourassa, however, made the issue of separatism a moot point for the remainder of the decade.

The international campaign for Quebec separatism began again in earnest following the federal election of the Bloc Quebecois (BQ) in 1993. In an address to the United Nations on March 1, 1994, Lucien Bouchard, the leader of the BQ, made it clear that separatism was once again at the forefront of Quebec's political agenda. Following his meeting with UN Secretary-General Boutros Boutros-Ghali, Bouchard stated that the BQ was "a party whose main cause, whose main justification is the fact that we think Quebec should secede from Canada, should get out of the federation."[56] Bouchard's comments marked an important development in the level of rhetoric traditionally used by Quebec separatists in the international community. For the first time an advocate of separatism used the term "separatist" as opposed to the traditionally vague reference to "sovereignty" which was considered less inflammatory by the federal government. Bouchard's trip, however, also presented a unique problem for Ottawa as, for the first time, a separatist party was also the official opposition in Parliament. The result was an uneasy relationship between federal and BQ officials in developing an itinerary appropriate for the American

visit. While the trip was financed by the BQ, Bouchard wanted to include federal participation hoping that a lack of significant protest from Ottawa would give his comments tacit legitimacy in the eyes of his international audience. Bouchard even pointed out to the press that he notified Foreign Affairs Minister Andre Ouellet that the issue of Quebec independence would be raised during his meeting with the Secretary-General and that the Canadian Ambassador to the United Nations, Louise Frechette, had also been invited to attend. Bouchard commented to officials that the unlikely partnership was an example of approaching the matter "in a civilized way, as we do things like that in Canada. ... I don't think we have to be disgraceful outside of the country - but we have to offer the spectacle of democratic society."[57] In the words of one observer, Bouchard's comments were an "attempt to take the high road, walking the line between diplomatic niceties and candour about his political goals." Essentially it was an "acknowledgment of the diplomatic paradox his visit represented. For while it was customary for Canadian opposition leaders to be received by the UN Secretary General... it was unprecedented for a supporter of Quebec independence to gain such audiences."[58]

Two months after his trip to the United Nations Bouchard took his separatist message to France. This time, however, Ottawa made it clear that there would be no pledge of support for Bouchard's international activity. In fact, Ouellet went on record as saying that Bouchard was "abusing his title as Leader of the Opposition."[59] Regardless, the trip had the potential to be immensely significant in Canada. According to one observer, "many Canadians outside Quebec [were] enraged by this trip as they were by his visit to [New York]; ... there was a sense then, as there was this time, that Canada's internal strife should not be aired in the international community [and] ... Mr. Ouellet's comments were an indication that this reaction is shared by the top level of the Liberal government."[60] In the end, however, the French government did nothing to support the issue of Quebec independence. While the leader of the Socialist party acknowledged Quebec's rights for separation, no such pledge was forthcoming from French President Francois Mitterand. Bouchard even admitted after the meeting that he "was 'shocked a little' by the run-of-the-mill questions Mitterand asked during the 45 minute visit."[61] Unknown to Bouchard, Ottawa had been informed by French officials prior to the meeting that France had no intention of getting involved in Canadian politics and that it would not be supporting Quebec's plans for an upcoming referendum on provincial independence.[62] Maryse Berniau, France's Consul-General in Vancouver, reaffirmed France's position on Quebec separatism. According to Berniau, "our policy of non-interference is a fact. My government has reaffirmed it on many occasions, leaving no room for ambiguity."[63]

Bouchard and Parizeau have also attempted to minimize American economic concerns by suggesting that an independent Quebec would not disrupt existing trade and investment in North America. Even before the provincial election of the PQ in 1994 Bouchard openly discussed separatism with American audiences. Bouchard attempted to calm economic concerns, as Levesque did before him, by stressing that it would be "business as usual" if Quebec was to separate. In a speech before a number of congressmen in Washington, a day after his trip to the United Nations in March of 1994, Bouchard stated that "first and foremost, Americans should know that, whatever the outcome of events, they will always be able to count on the cooperation and friendship of their neighbors to the north. ... The democratic values that we share ... will ensure the peaceful and enlightened accomplishment of Quebec's sovereigntist goal."[64] Several members that heard the speech were satisfied with Bouchard's message. Robert Torricelli, a Democrat from New Jersey noted that "if the best thing, which is the continuation of the status quo, cannot be maintained, Mr. Bouchard was offering us what is next to the best thing."[65] In an address to the Canadian Chamber of Commerce several months after his visit to Washington Bouchard suggested that these comments confirmed that considerable support for Quebec independence existed in the United States. According to one member of the audience Bouchard gloated that "English Canada could not count on the Americans to back unity, because U.S. interests would be better served by the breakup of Canada."[66] Further, Bouchard stated that "he was repeatedly asked during his March trip to Washington whether British Columbia and Alberta would also go their own way if Quebec separated. He [also] said the United States might annex either to get a land bridge to Alaska."[67] Other officials from both Ottawa and Washington, however, recalled a slightly different reaction to Bouchard's visit. The Canadian Ambassador to the United States, Raymond Chretien, stated that "on many occasions, many Americans told him... that [Quebec] would not be treated on preferential terms."[68] Even Quebec's delegate general in New York, Reed Scowen, told Bouchard "that he was wrong to claim he represented the interests of all Quebec."[69]

Bouchard's comments reflected his belief that provincial independence would not influence continental economic relations. The successful separation of Quebec from the rest of Canada, however, would likely have a direct impact on the current status of the North American Free Trade Agreement. While it is probable that an independent Quebec would one day become a full treaty partner to the NAFTA, it is doubtful it would be granted membership immediately following the referendum. In the first place there are provisions in international law that would allow Canada, the United States, or Mexico, to block Quebec's accession to the NAFTA.[70] Perhaps more importantly, however, there are

also questions as to whether or not an independent Quebec would have its own custom tariff. Custom tariffs are the laws governing the imposition of duties on imports. Some officials have suggested that an independent Quebec would simply adopt the Canadian tariff and its related duty rates. In doing so Quebec would hope to speed its entry into the NAFTA as it would share those provisions of the agreement already applicable to Canada. As some observers suggest, however, the use of the Canadian tariff would directly impact on Quebec's sovereign status in terms of international law. In using the tariff, and/or sharing defence forces, a central bank, or Canadian currency, Quebec would not be entitled to full recognition as a sovereign state under international law.[71] Furthermore, in adopting the tariff Quebec would be forced to rely on Canadian trade policy as Ottawa would be unlikely to agree to allow Quebec to adopt the tariff measures unless it maintained control of its administration and enforcement.

At this stage it is highly unlikely that either Canada or the United States would allow Quebec direct entry into the NAFTA. Washington, for example has made it clear that it will not pass up the opportunity to negotiate further concessions from Quebec in those sectors long protected from international competition. According to William Merkin, a former United States Trade Negotiator, the transition to a sovereign Quebec would not be as easy as suggested by Bouchard. As Merkin makes clear:

> Nothing is very easy in the trade field, as we have seen. ... We have a wonderful trade agreement between Canada and the United States, now expanded to Mexico, and nevertheless we have many disputes. I think if we entered into a negotiation between a sovereign Quebec and the United States to bring Quebec into the NAFTA, for example, there would be a number of special interest groups in the United States that, through their elected representatives in Congress, would put pressure on the administration to address those issues.[72]

As a result, it is probable that an independent Quebec would have to renegotiate its entry into the treaty with all three of the original signatories. In the words of one observer, "until those negotiations were completed, [Quebec] would remain outside the North American trading system with none of the advantages that accrue to NAFTA members."[73] Quebec could opt for its own customs regime but "until it secured admission to the NAFTA... there would be no automatic right of most favoured nation treatment for Quebec-origin goods and services. Other countries could legally charge higher duties on Quebec imports and apply discriminatory regulations to Quebec goods and services once they had been imported."[74] In addition, Quebec would also have to wait until China, the former states of the Soviet Union and all other previous applicants had been considered for membership in the new WTO. In the interim Quebec would have to implement a series of visible tariffs

and attempt to negotiate separate agreements with each of its trading partners in the hopes of regaining most of the benefits it currently has under the NAFTA.

Conclusion

In exploring economic developments in the post-war period it is possible to reach several conclusions regarding the inter-relationship of international globalization and Canadian federalism. As trade has changed from the exchange of commodity-based goods to those of service-based industries and foreign investment a number of areas of provincial jurisdiction have become the focus of international economic regimes. At the same time, a number of provinces have continued to expand international economic agendas that began to develop during the 1970s and 1980s. Provincial activity in the international system, however, has placed a number of restrictions on the autonomy of the federal government. All provinces have not shared the same interest in establishing these linkages and some continue to rely on the federal government to protect their interests. Constitutionally, however, Ottawa suffers from the lack of a clear definition of authority on issues of international economic policy. Federal control is also complicated by Canada's commitment to regime-based compliance mechanisms that are open to considerable interpretation. It has become increasingly difficult to restrict the activity of the provinces given the already well established precedent of international activity. These divisions are further exacerbated by the fact that several international trade disputes, most notably liquor boards and softwood lumber, involve areas of provincial jurisdiction.

The contents of the North American Free Trade Agreement also suggest that the agreement will reinforce the already divisive elements of the regional political economy of Canadian federalism. Although the NAFTA covers a wide range of sectoral interests it continues to focus on traditional export areas and there is little in the agreement that promotes the diversification of provincial economies. While the provinces are ultimately responsible for their own long-term economic plans, and most persist in trying to penetrate new markets, the provisions of the NAFTA are such that it is likely that British Columbia will continue to focus on the forestry sector, Alberta will maintain its traditional reliance on energy and agriculture, Ontario will rely on manufactured goods such as automobiles and parts, and Quebec will struggle to become more competitive in textiles and agriculture. In addition, the activity of federal and provincial separatist parties suggests that the issue of Quebec nationalism will continue to have an influence on future economic relations within North America. If successful, Quebec independence would not only further weaken an already divided Canadian economy but would also create a number of new issues related to the future relevance of the North American Free Trade Agreement. While improvements

have been made in federal-provincial consultation, the fact remains that there are no domestic compliance mechanisms available for the enforcement of existing international agreements. As the following chapters on the NAFTA side deals and the Canadian committee system on international trade suggest, the increasing intrusiveness of regimes and the increased demands from some of the provinces for more effective participation will only continue to limit federal control over the formulation of foreign economic policy in the future.

Endnotes

1. Kim Richard Nossal, *The Politics of Canadian Foreign Policy* (Scarborough, Ontario: Prentice-Hall Canada, 1985), pp. 191-210.
2. Douglas M. Brown and Murray G. Smith, "Introduction," in Douglas M. Brown and Murray G. Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* (Kingston, Ontario: Queen's University Institute of Intergovernmental Relations, 1991), pp. 3-4.
3. David Barrows and Gordon Jansen, "International Trade and the Management of Federal-Provincial Relations," in Brown and Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* p. 148.
4. Most federal constitutions clearly allocate authority in foreign affairs to the central government. The British North America Act has also been interpreted by centralists as conferring to the federal government a wide array of constitutional powers granting it control over external trade policy. These include: section 132, the royal prerogative for treaty-making; section 91(2) which explains the trade and commerce power; section 122 which outlines customs and excise control; section 91(14-21) which deals with monetary matters; sections 91(10)c and 92(10) which discuss the framework for transportation systems and the declatory power; section 121 dealing with the provisions for economic union; and the peace, order and good government clause (POGG) in the preamble to section 91. Critics, however, disagree with this interpretation and note that sections 91 and 92 of the British North America Act do not explicitly assign competence in foreign affairs to either the federal or provincial levels. In fact, a number of observers believe the only reference to international affairs in the entire Act is section 132 which outlines the treaty process in Canada and states that "The Parliament and Government of Canada shall have all powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards foreign Countries, arising under Treaties between the Empire and such Foreign countries." Why do Canada's constitutional provisions not clearly define the roles of both levels of government in terms of international economic agreements? It must be remembered that Great Britain was responsible for Canada's external relations in 1867 and it was not until well after the turn of the century that London began to relax its control in this area of policy. As a result, constitutional mechanisms defining federal and provincial authority in terms of international economic matters were essentially "non-issues" when drafting the British North America Act.
5. Robert G. Richards, "The Canadian Constitution and International Economic Relations," in Brown and Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* pp. 58-59.
6. Ibid., p. 59.
7. Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Issue Number 21, May 4, 1988* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1988), p. 10.
8. The *Manitoba Egg Reference* case (1971) and the *Central Canada Potash Company v. Saskatchewan* ruling (1978) provided further case law supporting the JCPC's earlier decision. Although other judicial decisions have also suggested that the federal government must limit itself to international transactions, some judicial rulings, such as the *Natural Products Marketing Reference* (1937) and *R. v. Klassen* (1959), have extended federal authority to intraprovincial transactions where the regulation of which was needed to uphold a valid federal marketing plan.
9. Richards, "The Canadian Constitution and International Economic Relations," p. 62.
10. Ian Robinson, "The NAFTA, the Side Deals, and Canadian Federalism: Constitutional Reform by Other Means," in Ronald L. Watts and Douglas M. Brown, eds.,

Canada: The State of the Federation 1993 (Kingston, Ontario: Queen's University Institute of Intergovernmental Relations, 1993), p. 214.

11. Richards, "The Canadian Constitution and International Economic Relations," p. 60.
12. Ibid.
13. Douglas M. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," in Brown and Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* p. 86.
14. Ibid., p. 86-87.
15. Ibid., p. 89.
16. Ibid., p. 90. Italics are mine.
17. Ibid.
18. Douglas M. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," in Douglas M. Brown and Earl H. Fry, eds., *States and Provinces in the International Economy* (University of California, Berkeley and Queen's University: Institute of Governmental Studies Press and Institute of Intergovernmental Relations, 1993), p. 115. Italics are mine.
19. Robinson, "The NAFTA, the Side Deals, and Canadian Federalism: Constitutional Reform by Other Means," p. 210.
20. Provincial activity in the international system, however, is not a new phenomenon. British Columbia has been represented in London for over 100 years and Nova Scotia sent officials to Britain as early as the eighteenth century to lobby the Colonial Office on economic matters. A number of provinces have also become welcome participants in local "functional" agreements with the United States on such issues as law enforcement, forest-fighting, waterways management, power grid arrangements, road, and highway and bridge management.
21. Jock A. Finlayson and Stefano Bertasi have argued that the Third Option and FIRA both failed to diversify Canadian trade, or to retard in any way the longer term process of North American economic integration. For a more detailed explanation of these conclusions, please see Jock A. Finlayson and Stefano Bertasi, *The Evolution of Canadian Postwar International Trade Policy* (Ottawa: The North-South Institute, 1990), p. 6.
22. Sean Riley, "Federalism and Canadian Trade Policy: The Early Days of the Mulroney Government," in Tom Keating and Don Munton, eds., *The Provinces and Canadian Foreign Policy, Proceedings of a Conference, University of Alberta, March 28-30, 1985* (Toronto: Canadian Institute of International Affairs, 1985), p. 46.
23. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," p. 106.
24. Peyton Lyon, "The Provinces and Canada Abroad," in Don Munton ed., *Groups and Governments in Canadian Foreign Policy, Proceedings of a Conference, Ottawa, Canada, June 9-11 1982* (Toronto: Canadian Institute of International Affairs, 1985), pp. 27-28.
25. Elliot J. Feldman and Lily Gardner Feldman, "The Impact of Federalism on the Organization of Canadian Foreign Policy," in M.W. Westmacott and R.D. Olling, eds., *Perspectives on Canadian Federalism* (Scarborough, Ontario: Prentice-Hall Canada, 1988), p. 272.
26. Personal interview with confidential source, February 11, 1994.
27. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," p. 101.
28. Ibid.
29. Ibid., p. 106.
30. F. Scott Fairley, "Constitutional Aspects of External Trade Policy," in M. Krasnick, ed., *Case Studies in the Division of Powers: Research Studies of the Royal Commission on the Economic Union and Development Prospects for Canada, Vol. 62* (Toronto: University of Toronto Press, 1986), p. 29.
31. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," p. 101.

32. There was no guarantee that the countervail action would allow a full recovery of American lumber interests. If the situation remained unchanged despite the countervail activity it could actually precipitate new U.S. legislation with a more protectionist definition of subsidy.
33. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," p. 103.
34. Ibid.
35. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," p. 121.
36. Kimberly Noble, "An Industry at War," *Globe and Mail* November 16, 1991, p. B-18.
37. Ibid.
38. Drew Fagan, "U.S. Challenge Cuts to Core of Trade Pact," *Globe and Mail* September 16, 1994, p. B-1.
39. Ibid.
40. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," p. 122.
41. Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement: An Overview and Description* (Ottawa: International Trade Communications Group, Supply and Services Canada, August, 1992), p. vii.
42. Robert Williamson, "B.C. Struggles with Slump in Asian Trade," *Globe and Mail* January 16, 1995, p. B-5.
43. PEMEX spent most of the 1980's attempting to service the Mexican debt and is only now attempting to repair and replace its outdated equipment in the oil and gas sector.
44. In a press conference at the Canadian embassy in Tokyo Klein told the Japanese media that "back home he was regarded as something of a connoisseur of beer." For more information on Klein's attempts to market Alberta beer in Japan, please see Mark Lisac, "Diplomatic Debut for Alberta Beer in Tokyo," *Edmonton Journal* November 9, 1993, p. C-7.
45. Personal interview with confidential source, January 24, 1994.
46. The NEP is still attacked on an almost daily basis in the Alberta legislature as an example of federal policy with little or no consideration of provincial economic interests.
47. Canada, Department of External Affairs and International Trade, *North American Free Trade Agreement at a Glance* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1993), p. 19.
48. For a more detailed examination of the traditional/cultural nature of the Quebec dairy sector, please see Rheal Seguin, "Quebec Dairy Farmers Worried," *Globe and Mail* December 13, 1993, p. A-3.
49. Nossal, *The Politics of Canadian Foreign Policy*, pp. 199-200.
50. Feldman and Feldman, "The Impact of Federalism on the Organization of Canadian Foreign Policy," p. 268.
51. Quebec nationalism is obviously not a new phenomena in Canadian federal-provincial relations. As early as 1865 opponents to Confederation argued that societal differences between Quebec and the rest of Canada made the prospects for future unity unlikely at best. Henri Joly de Lotbiniere, who would later become Premier of Quebec, suggested sarcastically during the Confederation debates that Canada should adopt the rainbow as a symbol as it "had an endless variety of colours, an elongated shape, and no substance." At the same time, however, it is also important to note that Quebec is not the only province that has pursued a "political" agenda at the international level. In 1980 for example, a group of dissident premiers, mostly from the West and Quebec, lobbied the British government in an attempt to rally support against Trudeau's plans to unilaterally patriate the constitution. Although British Prime Minister, Margaret Thatcher, made it clear that any position on the constitutional issue would violate Commonwealth protocol provincial bureaucrats continued to lobby British MP's. Although most members of the House of Commons in London where treated to lavish dinners by the provinces, what was

then labeled as the "battle of the dining rooms," the constitutional bill was passed by the British Parliament without difficulty in March of 1982.

52. Nossal, *The Politics of Canadian Foreign Policy*, p. 201.
53. Ibid., p. 205.
54. Ibid., p. 203.
55. Ibid., p. 204.
56. Graham Fraser, "Bouchard Carries 'S' Word to U.S.: Bloc Quebecois Leader Visits UN, Bluntly Talks of Separation," *Globe and Mail* March 2, 1994, p. A-1.
57. Ibid., p. A-3.
58. Ibid.
59. Susan Delacourt, "Bouchard's Pitch Overseas Irritates Ottawa: Taking Separatist Campaign to Paris, Brussels is Abuse of Opposition Leader's Title, Ouellet Says," *Globe and Mail* May 16, 1994, p. A-3.
60. Ibid.
61. Bill Schiller, "French Treatment Shocks Bouchard in Bid for Support: He's Shooed from Elysee Palace After 'Empty' Mitterand Meeting," *Vancouver Sun* May 18, 1994, p. A-1.
62. Schiller also accounted an incident in which Bouchard's own staff was publicly embarrassed in front of the international media. In Schiller's words "some members of Bouchard's staff were absolutely elated when the palace's Republican Guard emerged, shortly before the end of the meeting, to stand at regal attention, festooned with feathers and steeled with armour. 'It's for Lucien,' one of Bouchard's young staff beamed proudly to numerous journalists. 'It's for Lucien.' Alas, it was not for Lucien. It was for Jozef Moravcik, the prime minister of Slovakia. As Bouchard sped off Moravcik sped in."
63. Maryse Berniau, "France Neutral on Quebec," *Vancouver Sun* October 17, 1994, p. A-9.
64. Graham Fraser, "Bouchard Reassures U.S. Audience on Sovereignty," *Globe and Mail* March 3, 1994, p. A-3.
65. Ibid.
66. "U.S. Might Seek to Annex West, Bouchard Says: Americans Won't Resist Breakup, Bloc Leader Tells Business Group," *Globe and Mail* May 30, 1994, p. A-1.
67. Ibid.
68. Julian Beltrame, "U.S. Officials Warned Bloc Boss Over Entry to NAFTA, Diplomat Says," *Vancouver Sun* March 11, 1994, A-15.
69. Fraser, "Bouchard Reassures U.S. Audience on Sovereignty," p. A-3.
70. Although rarely enforced a convention on state succession was negotiated at the United Nations in 1978 that allows signatories to existing treaties the right to object to the unilateral declaration of membership of those states not involved in the original agreement.
71. Monaco has been cited as an example of a state lacking sovereignty as it shares the its currency and other economic policy initiatives with France.
72. "U.S. Might Seek to Annex West, Bouchard Says," p. A-1.
73. Lawrence L. Herman, "The PQ Can't Count on Easing Quebec into NAFTA," *Globe and Mail* July 8, 1994, p. A-21.
74. Ibid.

CHAPTER 5

The Committee System on International Trade

Introduction

The preceding discussion suggests that the intrusiveness of economic regimes has blurred the distinction between Canadian federalism and developments at the international level. In fact, linkages are now so pervasive that it is becoming increasingly less relevant to differentiate between international and domestic levels of analysis, especially in terms of the formulation of Canadian foreign economic policy. As these regimes continue to include more areas of provincial jurisdiction the federal government is forced to secure the compliance of domestic actors with legitimate jurisdictional authority in specific issue areas. Given that Canada's constitutional division of powers on international economic issues is somewhat vague, however, it is increasingly more complicated for the federal government to negotiate and enforce these agreements. As a result, Ottawa has implemented a federal-provincial committee system to deal with these issues. This in itself is not significant. After all, Ottawa has used committees to address issues of federal-provincial concern for decades. What is important in terms of the North American Free Trade Agreement (NAFTA), however, is the manner in which these executive linkages have developed. Specifically, the NAFTA committee system has evolved into a more permanent forum for federal-provincial consultation than previous mechanisms established under the GATT and/or the FTA. It is also clear that the committee system has allowed greater provincial

access to the policy process and in doing so has placed a number of new international trade related issues on the agenda of Canadian federalism. At the same time these developments also raise a number of questions regarding the long-term implications of these linkages. Will an institutionalized brokerage mechanism for international trade open the door for full provincial participation in future trade negotiations? As the role of the provinces continues to expand will the committee system gain increasing legitimacy as a formal constitutional mechanism for managing Canadian foreign economic policy? What implications will these committees have on both federal and provincial autonomy? While all states are influenced by the intrusiveness of international economic regimes, federal states such as Canada face a number of challenges that influence the ability of both levels of government to develop independent policy initiatives. Specifically, these agreements place a number of new issues on the domestic agenda and create the potential for constitutional change in an issue area not traditionally viewed as an important part of Canadian federalism.

The Provinces and the GATT - The Early Years

As previously noted, GATT negotiations in the immediate post-war period focused almost exclusively on lowering tariffs and other "visible" barriers to trade. Given that the scope of international economic regimes was primarily limited to areas of federal jurisdiction most provinces had very little interest in participating in any international trade negotiations. During the Kennedy Round, however, some of the provinces began to pressure Ottawa for greater involvement on these issues and several premiers submitted formal reports on tariff policy to the federal government. Ottawa's response was tentative and there was little indication that the federal government was prepared to consider even a limited provincial role during the Kennedy Round. According to one observer, as long as the agenda at the GATT was dominated by areas of federal jurisdiction it was clear that Ottawa was going to "negotiate trade issues with only minimal reference to the views of the provinces."[1] As one member of the Canadian delegation suggested at the time, the provinces received no preferential treatment during this period and "got told [about international economic policy] when everybody else got told."[2]

By the time the Tokyo Round began in 1973 the focus of the GATT had shifted to the difficult issue of non-tariff barriers (NTBs). Negotiations on visible tariffs were replaced by discussions on government procurement, subsidies, and other technical barriers. Sectoral negotiations on fisheries, resource-based products, and agriculture also involved areas of provincial jurisdiction. As a result, the provinces demanded direct consultation with Ottawa in order to address their concerns during the multilateral negotiations. The federal government could no longer treat the issue of provincial

involvement as a public relations exercise of information gathering. The focus on NTBs and other areas of provincial jurisdiction during the Tokyo Round meant that Ottawa needed the support of the provinces if it was successfully to negotiate a binding international agreement. The federal government had to include the provinces or else it would be unable to implement the agreement and avoid future trade challenges based under the "federal state clause" of the GATT.

At the beginning of the Tokyo Round negotiations the only formal mechanism for provincial input was the Canadian Trade and Tariffs Committee (CTTC). The committee, chaired by a federal deputy minister, gathered briefs from business, unions, consumer groups, the provinces, and all other interested parties. In order to better represent regional interests a more "political" and direct forum for the provinces was established in 1975 with the creation of an ad hoc federal-provincial committee of deputy ministers. In August of 1977 a Canadian Coordinator for Trade Negotiations (CCTN) was appointed by the federal government with the mandate to coordinate relevant information from the provinces, the federal bureaucracy, industry, and other non governmental organizations. Once compiled, this information was transferred to both the federal cabinet and to the Canadian negotiating team in Geneva. According to one observer, the chair of the CCTN, Jake Warren, who was then the Canadian Ambassador to the United States, "helped to focus provincial bureaucratic input to the negotiations. The provinces saw this as an improvement over the CTTC which was not perceived as having any determining influence over the Canadian negotiating position."[3]

Most provinces were pleased with the new consultative process. Others, notably British Columbia, Alberta, Ontario, and Quebec, continued to push for a greater role during the Tokyo Round. These four provinces sent delegates to Geneva, Quebec's staying for the entire period of negotiation, but Ottawa refused formal provincial representation in the Canadian delegation. For the most part, however, relations between Ottawa and the provinces were cordial during the Tokyo Round. The federal government kept provincial officials informed and most of the provinces submitted detailed and useful positions to the negotiating team. According to one observer, "thus began a movement along the learning curve for growing provincial expertise in trade matters, as more professional and other resources were devoted to the analysis of trade issues and detailed consultation with local economic actors in each province."[4] Ottawa also benefited from the increased activism of the provinces by having access to detailed positions on domestic jurisdictional issues such as procurement and provincial liquor boards. As a result, despite a number of ongoing concerns in Ottawa vis-a-vis provincial empowerment, there was a fairly positive feeling amongst federal and provincial officials during the Tokyo Round. In fact, the MacDonald

Commission "recommended the use of the 'successful' procedure followed during the Tokyo Round in future trade negotiations, in particular for the bilateral trade negotiations with the United States."[5]

As a result, it was not surprising that federal-provincial consultative mechanisms became more institutionalized following the Tokyo Round. Senior officials met regularly on newly created federal-provincial committees on trade policy and the ministers responsible for trade at both levels took steps to improve existing channels of communication. Ottawa and the provinces also worked closely on sectoral disputes such as softwood lumber and transborder trucking. At the same time, however, there was growing tension between both levels of government over what form these new linkages would take. There were a number of federal officials, for example, who felt that the provinces wanted to increase their international profile without making the difficult economic commitments that went along with these new responsibilities. The reluctance of the provinces to enforce GATT rulings on provincial liquor boards clearly frustrated trade representatives in Ottawa who were of the opinion that the provinces would also make it difficult to present a unified Canadian position at the international bargaining table on other issues such as agriculture and government procurement. The federal refusal "to include provincial representatives on the Canadian delegation to the GATT ministerial meeting in December 1982 reinforced this tension."[6]

A number of the provinces were also opposed to what they saw as outdated federal policy programs left over from the centralist Trudeau agenda of the 1970s. Provincial opposition to the National Energy Program, to this day a favourite target of Alberta politicians, and the Foreign Investment Review Agency were frequently cited as the main cause of an often confrontational trade relationship with the Americans. Although these pressures "ultimately contributed to Ottawa's decision to pursue sectoral free trade with the United States they also created serious tensions between Ottawa and certain provincial capitals."[7] The assistance the provinces had provided during the Tokyo Round negotiations was undeniable but as perceived provincial empowerment in these issue areas increased so did federal opposition to a greater role for these actors. As a federal official noted at the time, the provinces brought items to the forefront of Canadian foreign economic policy that were damaging to both federal-provincial relations and Canada's position in the international community. The same official suggested "the scope for petty politics is immense - and can be very destructive."[8]

The Provinces and the Canada-United States Free Trade Agreement

Despite these ongoing tensions the raised expectations of the provinces for further participation in future trade negotiations was clearly evident during the Canada-United States free trade negotiations. The federal government was rather ambivalent about the issue of provincial participation as it began seriously to consider a bilateral trade agreement with the United States. Several provinces, however, were adamant that the provincial role be expanded from the outset of the negotiations. As Bruce Doern and Brian Tomlin point out, it was not surprising that calls for provincial participation came first and loudest from the West, especially Alberta. Peter Lougheed, Alberta's premier, and Prime Minister Brian Mulroney shared similar views on the prospect of free trade but the main motivation of the western provinces was to ensure that future trade negotiations would not be dominated by Ontario and Quebec. In the spring of 1985, the four premiers of British Columbia, Alberta, Saskatchewan and Manitoba all announced their support for bilateral free trade, but requested "full provincial participation" in any upcoming negotiations. Some, but not all, of the other provinces expressed similar positions on provincial involvement. Ontario and Quebec, while somewhat cautious in their support for a comprehensive trade agreement with the United States, supported the principle of full participation. The Atlantic provinces, on the other hand, "while supporting negotiations, were neutral on the question of full provincial participation. They were more inclined to rely on the federal government to protect their interests against Central Canadian predators."[9]

Provincial aspirations came to the forefront of the federal-provincial relationship at the Annual First Ministers' Conference on November 28-29, 1985, in Halifax. Mulroney was not expecting the increased demands that were presented by the provinces. The Department of External Affairs and the Federal-Provincial Relations Office, the two federal departments responsible for briefing the Prime Minister on trade related issues for the conference, had not even considered the possibility that some provincial governments might challenge Ottawa for a role in the upcoming bilateral trade negotiations. Some observers suggest that Ottawa's failure to recognize the growing ambition of the provinces was an oversight that should not have been missed. Mulroney had committed the Conservative government to the principle of national reconciliation in federal-provincial relations during his election campaign of 1984, but there had been few opportunities to back these promises with any concrete policy developments. Further, as trade negotiations with the United States would inevitably include a number of areas of provincial jurisdiction, it would be extremely difficult for Ottawa to shut the door on provincial requests for participation. "Moreover, the apparently unconditional federal commitment to

cooperation with the provinces emboldened the premiers in their bid for expanded powers." According to Doern and Tomlin "the stage was set for an aggressive provincial effort to capture a seat at the free trade table."[10]

The provinces entered the Halifax conference with a coordinated plan designed to gain as much power as possible. The western premiers started the attack on the afternoon of the first day by proposing that the provinces be full and equal participants in any trade discussions with the United States. Ontario then pushed for further access and called for a joint federal-provincial secretariat to monitor negotiations. As one observer noted:

> the prime minister was on the spot, and External Affairs officials were left squirming. Simon Reisman, who had been appointed chief negotiator earlier in the month, was flown to Halifax the following day to put out the fire. Reisman's blunt rejection of the provinces was enough to scuttle the Ontario proposal for a joint secretariat. But he was unable to shut the provinces out entirely, and External Affairs Minister Joe Clark put forward the deliberately undefined principle of "full provincial participation" in the negotiations in order to satisfy provincial demands.[11]

Not surprisingly, the provinces left Halifax with the impression they had a commitment from the federal government for full participation during the free trade negotiations. This was clearly unacceptable to Ottawa, but it was also difficult for the federal government to denounce the province's declaration of victory due to Mulroney's commitment to "cooperative" federalism. The ambiguity of Ottawa's position on the issue of full participation was echoed by several federal officials following the conference. One representative suggested that Mulroney's lack of preparation for the Halifax "ambush" left Clark and Reisman with "an incredible mess to deal with. Both knew that full provincial participation would lead to a number of problems during the negotiations, not to mention the difficulties it could present for other areas of federal-provincial relations."[12] It was also clear, however, that both Clark and Reisman wanted the provinces on-side going into the free trade negotiations. After all, provincial cooperation was essential given the areas of domestic jurisdiction that were on the table. Federal officials have also suggested that some provinces were more important to the process than others. As one trade representative candidly noted "naturally, the economic considerations of Ontario and Quebec outweighed those of the corrupt, welfare collecting Maritime provinces."[13] Ottawa's failure to define an early position on provincial participation resulted in the new Trade Negotiations Office (TNO), headed by Reisman, expending considerable resources to non-trade issues. "Rather than assigning the bulk of his time and that of his staff to preparations for the substance of the upcoming negotiations, Reisman was preoccupied with the question of

provincial participation during the crucial months leading up to the start of negotiations in May 1986."[14]

The question of provincial participation was finally settled following the presentation of a compromise position put forward by Don Getty, the newly elected premier of Alberta, in March of 1986. Getty proposed on behalf of the provinces "a set of modalities for participation that included, among other things: the establishment by all first ministers of a joint mandate and joint control over Canada's chief negotiator; full provincial representation on the Canadian negotiating team, including the option of 'being in the room' with the Americans; full participation in the negotiating strategy; and full information sharing in confidence with the federal negotiators."[15] These recommendations were similar to earlier demands by the provinces for "full participation." Ottawa recognized that the TNO needed to concentrate its efforts on the details of the negotiations. Mulroney also realized that provincial participation, and more importantly provincial cooperation, was essential if the trade deal was ever going to be completed. Finally, in June 1986 the provinces accepted a federal compromise that allowed Reisman and the TNO to concentrate on the upcoming negotiations. These details included:

> 1. The first ministers would meet once every three months for the duration of the negotiations, to review their progress. The first such meeting was set for 17 September 1986.
> 2. Designated ministers would meet as required, chaired by the new federal Minister for International Trade, Pat Carney.
> 3. There would only be one Chief Negotiator for Canada, Simon Reisman, who would be fully responsible to the federal cabinet for the conduct of the negotiations. The Trade Negotiations Office (TNO) would be completely under the Chief Negotiator's supervision. There would be no provincial representatives in the TNO or in negotiating sessions with the United States.
> 4. The Chief Negotiator's mandate would be established by the federal government, in consultation with the first ministers and the designated ministers.
> 5. There would be close ongoing consultation through the CCTN with Simon Reisman as Chairman. The CCTN, which had met once a month since January 1986, would continue to meet as often as required. Its function would be to provide liaison and advice.
> 6. The federal government would formally seek the views of all provinces prior to endorsing any agreement. There was no agreement on the issue of the role of provinces in the ratification or implementation of the agreement.[16]

In sum, the federal government gave the provinces enough power to satisfy some of their demands without losing control of the process. Provincial representatives would not physically be part of the negotiation team, but the provinces appeared to have more potential input than in any other previous arrangement.

It should be remembered that intergovernmental negotiations were not the only domestic discussions regarding the proposed free trade agreement with the United States.

Between 1985 and 1988 Ottawa also initiated a series of consultative linkages with the Canadian private sector. These consultations took the form of the International Trade Advisory Committee (ITAC), chaired by the chairman of Northern Telecom, Walter Light, and 15 Sector Advisory Groups on International Trade (SAGITs). According to one observer, a considerable amount of "detailed advice from the private sector reached the federal government through these groups, and in turn private sector representatives were kept informed of the Canadian position."[17] A number of the provinces also initiated their own discussion groups with the private sector and in turn shared their information with the federal ITAC and SAGITs. In general, these federal-domestic private sector committees were considered a success by most of those involved. Not only did they assist Ottawa in drafting proposals on specific sectors during the FTA negotiations, but business and other non-governmental groups also believed they had directly participated in the policy process. While this may be overstating the actual impact of the ITAC and SAGITs, it is interesting to note the seriousness with which Ottawa viewed these committees. In comparing the ITAC and SAGITs to the federal-provincial committee system that was evolving at the same time some federal officials have suggested that the private sector linkages were more important. According to one representative:

> Ottawa does not distinguish the provinces from business all that much. The real difference between the two as far as we are concerned is that business does not like to play a lot of "political" games and in some cases this gives them a lot more credibility than the provinces. In fact, it would be a mistake to think the private sector was less important than the provinces because there are a number of examples where that would be untrue.[18]

These comments may simply reflect the desire of the federal government to minimize the ever growing aspirations of the provinces, but it is important to remember that Canadian trade negotiators were faced with a broad requirement for consultation that produced pressure on trade policy issues from a wider range of domestic actors than ever before.

With consultative mechanisms now in place Canada entered into bilateral free trade negotiations with the United States. The first stage consisted of a number of meetings between the two parties where various issues were placed on the table and working groups were formed to work on specific sectors. It was at this early stage that some fundamental differences began to emerge between the two negotiating teams. Canada saw the negotiations as a means of extending "national treatment" to a wide range of goods and eliminating tariffs and other NTBs that continued to restrict trade. The United States, however, had a more modest agenda. The primary goal of the American team was to expand and strengthen the GATT bilaterally as opposed to any radical transformation of the

existing continental trade relationship. The United States wanted to pursue what some observers labeled an "irritants approach" in which the bilateral negotiations would be used as a forum to get the Canadian government to change a number of trade related practices that traditionally created friction between the two countries. During this first stage Reisman was still dealing with the provinces in terms of finalizing their role in the negotiations.

The second stage of the negotiations began in mid-November 1986 and consisted of 17 formal bargaining sessions between the United States and Canada. This stage was dominated by specialists from the bureaucracies of both countries who conducted the highly technical meetings. Following an economic impact study by the United States International Trade Commission in January of 1987 the Americans concluded that negotiations should in fact concentrate on the elimination of U.S. and Canadian tariffs. Both sides made proposals on which products would benefit from short term, medium term, or longer term removal of tariffs and both Washington and Ottawa responded to these early initiatives with intense bilateral negotiations on a number of historically conflictual sectoral issues. Despite early Canadian objections the United States even tabled a proposal designed to open up services as part of the negotiating agenda. It was during this stage that the differing perception of the importance of the negotiations for the two governments became evident. Canada had brought a highly experienced team to the negotiations but the Americans sent a delegation with limited political seniority. Canadian negotiators quickly became frustrated by the lack of access to senior American representatives and began to indicate that negotiations would be terminated unless the situation was altered. At the 22nd meeting of the negotiations on September 23, 1987, Canada announced that it was suspending the talks based on what they saw as a lack of response to Canadian proposals. Ottawa had managed to create a consensus with both the provinces and the Americans on important provincial sectoral interests such as agriculture, services, investment and energy, but Canadian officials "continued to press for a binding mechanism that would circumvent U.S. trade remedies, while the United States demanded commitments from Canada limiting the use of subsidies that went well beyond the standard of existing U.S. trade laws. The result was a standoff and a breakdown of the negotiation."[19]

As suggested above, Ottawa's consultation with the provinces prior to the breakdown of discussions in September of 1987 was based primarily on the ongoing technical substance of the negotiations. The CCTN was the main forum of consultation during this period but it was supplemented by various sub-committee meetings, ministerial meetings, innumerable bilateral meetings of officials and the quarterly first ministers meetings. "The key features of this stage of consultation were that, for the most part, a degree of professional trust prevailed, and information was shared in confidence."[20] Some

provinces, however, did express concern that the federal government was using the process to stifle provincial interests. Officials pointed to lengthy presentations by the TNO during meetings of the CCTN and also suggested that federal officials were less than candid with relevant information. Ottawa also complained about leaks to the press that undoubtedly came from the provinces and the fact that some provincial governments were not providing the detailed information necessary to enter successfully into negotiations on areas of domestic jurisdiction. Most of those involved, however, thought that consultation between both levels of government was relatively successful given the many problems that were faced along the way. While not part of the formal federal delegation, the provinces were having an impact on the direction and substance of the talks. Despite the comments of some federal officials, "the degree of information and input appeared to exceed that of most other domestic actors, including the private sector, other federal departments and parliament. Only the TNO itself, the Prime Minister's Office and the special subcommittee of the federal cabinet on trade appeared to have greater access to the negotiating process."[21]

The last stage of the negotiations, which was followed by the Canadian walkout in September, lasted until October 4, 1987. The move by Canada to suspend discussions was greeted by a number of members of the United States Congress as nothing more than a negotiating stunt by the Canadian government, but it did raise the level of the talks. Responsibility for the American team was quickly transferred to Secretary of Treasury James Baker and chairman of the Cabinet Economic Policy Council Clayton Yeutter. The Canadian delegation also came under the control of the Prime Minister's Office (PMO) and was led by PMO Chief of Staff Derek Burney as well as Trade Minister Pat Carney and Finance Minister Michael Wilson. Room to re-open discussions came from both sides as Baker recognized the potential political fallout that might accompany a rejection of the deal and Burney became willing to compromise on demands for a "binding" and "definitive" dispute settlement process. Subsidies remained a major stumbling block, however, and threatened to stand in the way of the successful completion of the deal. When an impasse appeared inevitable the Americans presented a final proposal based on a different approach to the subsidy issue. The United States suggested that any changes to national antidumping and countervail laws were to be postponed until a later date and that existing trade remedy legislation would remain intact. The United States "would agree to an ad hoc binational panel review process, but until new rules were established the panels would operate on the basis of each country's domestic antidumping and countervailing duty legislation. The main power of the panels would be that of judicial-like review over antidumping and countervail cases."[22]

The proposal was followed by two days of intense negotiations in Washington starting on October 2, 1987. A number of issues came together very quickly, but the Canadians had one last demand that the American delegation felt was impossible to meet. Canada wanted to ensure that the U.S. Congress would not have the power to reverse a decision by the proposed dispute panels. For Canada this was a deal-breaker but American constitutional powers gave Congress the right to regulate foreign commerce. The Canadian delegation finally accepted a compromise where the U.S. agreed to name specific parties in future amendments to antidumping and countervail laws that had an impact on goods traded between both countries. Further, the United States agreed to subject future statutory amendments to the binational panels which gave these bodies the right to issue declatory opinions on whether a challenged amendment was consistent with the agreement. This was acceptable to Canada and concluded the negotiations of the major sectoral issues of the FTA. The only process that remained was the drafting of the final text of the agreement and the subsequent need to pass domestic implementing legislation in both Canada and the United States.

Provincial participation during the final stages of the FTA negotiations was extremely limited. In fact, leading up to the October 3rd deadline imposed by the U.S. Congress "fast track" legislation there was no formal consultation with the provinces of any kind. As a result, there were aspects of the final deal that the provinces were likely unaware of as they were being discussed in Washington in early October of 1987, especially in terms of the new trade dispute process. Despite this lack of consultation, however, the content of the final agreement produced no major surprises for the provinces. Provisions dealing with the Auto Pact, energy, and cultural initiatives, for example, were all discussed in detail during earlier negotiations. Other items, including agriculture, wines and spirits, exceptions, national treatment, and services and investment, also received a great deal of attention in earlier federal-provincial meetings. Regardless, during the final stages of the negotiation the reality of the provincial role was extremely minimal. Even in "the period from the release of the preliminary agreement to the release of the detailed legal text, there were again no formal meetings with the provinces."[23] Some minor changes to the final text did occur as a result of several informal meetings between the United States and Canada prior to the release of the final text but the provinces had no role in this process.[24]

Greater demands for provincial involvement during the FTA negotiations marked yet another stage in the evolution of the role of the provinces in the formulation of foreign economic policy in Canada. Although the federal government responded to the increasing intrusiveness of the FTA by establishing what was primarily an ad hoc system of

consultation with the provinces, the CCTN was clearly an improvement over previous federal-provincial linkages in this policy area. Having experienced some degree of success during the FTA negotiations it was not surprising that the provinces began to call for more participation, as opposed to consultation, in the aftermath of the FTA. As it became clear that Canada was about to enter into trilateral negotiations with the United States the provinces began to make even greater demands for a formalized role in the policy process. What began as an extremely limited provincial presence during the early rounds of the GATT was now on the verge of becoming an increasingly legitimate forum for the provinces in terms of addressing regional economic concerns at the international level. Not surprisingly the new committee system that emerged in response to the North American Free Trade Agreement also served to further limit the capacity of the federal government to pursue its own independent economic policy initiatives.

NAFTA and the Evolution of the Federal Provincial Committee System

An indication of on-going provincial interest in international trade and improved federal-provincial linkages in the area of trade policy were evident in the on-going dialogue between Ottawa and the provinces following the Canada-United States Free Trade Agreement. Shortly after the implementation of the FTA the CCTN became the Committee for the Free Trade Agreement (CFTA). Each province had one official representative or contact person that sat on the CFTA and gave the federal government a direct link to the provinces on issues related to the agreement. Ottawa also set up a series of consultative committees with various provincial departments in specific sectors in an attempt to address sectoral concerns as well as a number of on-going trade irritants. Similar sectoral committees were also set up at this time for the stalled Uruguay Round GATT negotiations. As important as these developments were to the provinces, however, they still did not represent a departure from the federal-provincial relationship that existed prior to the FTA. The provinces received more information, but they still had no formalized role in the formulation of Canadian foreign economic policy. As one provincial official made clear, the CFTA and other related committees that emerged following the implementation of the FTA "were not decision-making meetings. Although some of the provinces tried to use these committees to push for provincial programs or economic interests Ottawa ultimately saw them as little more than forums for passing information to the provinces."[25]

Any confusion over Ottawa's position on the evolution of the committee system was put to rest by 1990. In what appeared to be a victory for the provinces the federal government agreed to enter into negotiations to formalize federal-provincial linkages following the 1988 First Ministers' Conference. In these negotiations, however, the

provinces continued to push for a more inclusive role in the policy process while Ottawa attempted to limit provincial input as much as possible. The negotiating power of the provinces was also limited due to the lack of consensus among provincial governments on the form and content of these new proposed linkages. Quebec, for example, tabled an initiative in 1990 calling for the creation of a "hierarchy" of provincial participation that would allow access to the policy process for a select number of provinces based on the areas of jurisdiction that were at stake. A number of officials, especially those of the smaller provinces who were somewhat suspicious of increasing provincial power in this issue area in the first place, were concerned that regional development programs and economic initiatives would be dominated by the interests of British Columbia, Alberta, Ontario and Quebec. According to one provincial representative, British Columbia "also had a problem with the proposal as it essentially gave Quebec and Ontario a veto that was not extended to other provinces with a significant economic stake in the federal-provincial relationship."[26] Ottawa also voiced its displeasure with the Quebec proposal and announced that talks on the issues of consultation and collaboration were now at an impasse. As far as the federal government was concerned the joint management approach suggested by Quebec would involve constitutional changes Ottawa was not prepared to make. By the end of 1990 it was clear that these differences were irreconcilable and discussions aimed at formalizing a role for the provinces in the policy process came to a standstill. The subsequent proposal and negotiation of other wide ranging constitutional issues (culminating in the rejection of the Charlottetown Accord) also meant that these previous discussions were no longer an important aspect of federal-provincial relations.

The federal government continued to expand its consultative linkages with the private sector and the provinces during the trilateral trade negotiations between Canada, Mexico and the United States following the successful implementation of the FTA. When the United States and Mexico announced their intention to pursue a formalized bilateral trade relationship in June of 1990 the Canadian government was somewhat reluctant to get involved. The debate over the FTA had been bitter and there were a number of critics that suggested Canada did not need to enter into a trade deal involving the Mexicans for reasons ranging from human rights abuses to the reality of minimal economic relations between the two countries. Ottawa, however, was concerned with the potential economic implications that Canada might face as a result of closer trade relations between the United States and Mexico. During the early stage of Mexican-American discussions the Canadian government continued to debate the issue and consulted with the provinces, the private sector, academics, labour organizations and other experts in an attempt to reach a conclusion on whether or not Canada should participate. Although Mexico and the United

States understood that a trilateral agreement would be more complicated to negotiate than a bilateral arrangement both governments made it clear that Canada would be welcome to join the continental free trade discussions if it wanted. Ultimately, Ottawa decided "the only way to ensure that negotiations would have transitional arrangements tailored to Canadian needs would be to get in at the outset and use Canadian negotiating skills to obtain the maximum results possible."[27] As Robert Clark, Canada's Deputy Chief Negotiator for the North American Free Trade agreement, noted in May of 1993:

> Canada could let this negotiation pass and wait for a more - we hoped - opportune occasion in which to engage our two North American neighbours in trade negotiations. We could sit there as observers and try to get a feel for the negotiations, but not participate in them. We could obtain a commitment in principle from the other countries to negotiate a trilateral agreement with us at some later point. Or we could get in on the ground floor and pursue trilateral negotiations from the outset.[28]

As with the FTA Ottawa was quick to acknowledge the significance of the private sector in the early stages of the NAFTA negotiations. In fact, federal officials often cited the importance of the private sector and its positive influence on Canada's decision to participate in the trilateral trade discussions. When one considers the long-term success Ottawa enjoyed in controlling the ITAC and SAGIT process it is perhaps not surprising that federal officials would praise these linkages. The federal government always perceived these forums as an effective tool for managing constituency pressures and responding to private sector demands in an organized manner. It is also clear, however, that Ottawa valued the ITAC and SAGIT process as a means of preventing the formation of any united sectoral opposition to the NAFTA. These linkages gave non-governmental groups and business the perception they were directly involved in the NAFTA policy process. Ottawa, however, was more interested in eliminating the possible negative impact of these groups. Instead of gathering information the federal government was more concerned with a "divide and conquer" approach in its dealings with the private sector. For both the FTA and the NAFTA the ITAC and SAGITs "were not hierarchically integrated, which allowed government to deal directly with grass roots sector constituencies and reduced the capacity of the ITAC to aggregate sector interests and therefore to speak for the private sector as a whole."[29] As a result, the federal government was able to silence any potential criticism from the private sector by co-opting these domestic actors into what was, in reality, only a minor aspect of the policy process.

The ability of the ITAC and SAGITs to mount any real opposition to the NAFTA was also limited by its "relationship" with the federal government. Unlike its counterpart in the United States, the Advisory Committee on Trade Negotiations (ACTN), the ITAC and

SAGITs did not have the legislated authority to evaluate and comment on federal trade agreements. In the United States, the executive is granted the power to negotiate international trade agreements by Congress, which in turn is influenced by the deliberations and recommendations of the ACTN. In Canada, the ITAC does not have the authority to form an opinion on whether or not the NAFTA is harmful to Canadian economic interests. It is questionable what impact such a mandate might actually have on the policy process. Is it conceivable that the private sector could ultimately challenge the authority of the federal government to enter into binding international agreements? Presumably, this pressure would be directed to elected officials who in the United States can delay, and even prevent, legislation from being implemented. This was clearly evident during Bill Clinton's struggle to pass the NAFTA in the United States Congress. In Canada, however, the elected representatives of Parliament do not enjoy the same constitutional relationship as the United States Congress does with its executive branch. Even if the private sector was able to form a united grass roots-based opposition to the NAFTA, and evidence to date suggests this is unlikely, any potential influence on elected Canadian officials is somewhat moot given the unitary control of Cabinet and the role of the federal bureaucracy in the policy process. Party discipline also limits the ability of elected officials from influencing the Canadian policy agenda. As a result, the Canadian government managed to "avoid giving the ITAC equivalent advisory powers that the ACTN enjoyed in the United States, with the result that constituency groups in Canada have less influence than U.S. groups have over trade policy."[30]

As was evident during the FTA negotiations, however, the constitutional role of the provinces in federal international trade negotiations remained unclear. While Ottawa and the provinces continued to differ on the issue of "full" participation, both levels of government worked closely together following Canada's decision to participate in the trilateral trade negotiations. This cooperation was especially evident in terms of the changes that occurred to the federal-provincial committee system on international trade. The CFTA remained in place to deal with on-going issues of federal-provincial concern, such as trade disputes that developed as a result of the still functioning FTA, but Ottawa also needed to establish a new dialogue with the provinces in order to proceed with the NAFTA negotiations. In response, the federal government agreed to institute the Committee for North American Free Trade Negotiations (CNAFTN). The provinces, while generally pleased with the CFTA, agreed that the CNAFTN established the most advanced level of federal-provincial consultation to date.

According to provincial officials there were a number of factors that contributed to improved access for the provinces. First, and foremost, were jurisdictional issues arising

from the NAFTA agenda. If Ottawa was to enter into discussions on these sectors, or negotiate an agreement that had any hope of being implemented, it was imperative the provinces be involved from the outset. The CNAFTN provided a forum in which these discussions were possible. A second reason cited by the provinces was the belief that the federal government was making a very real effort to open up the policy process. Noting the development of the ITAC, SAGIT, CFTA, and CNAFTN, one official suggested that "for all the negative things that emerged from the Mulroney era the involvement of the public and private sector in the policy process during the last ten years was a development the provinces were strongly in favour of."[31] Federal officials also stated that as far as they were concerned the NAFTA marked "the most significant effort Ottawa has ever made in terms of including the provinces and other groups in the negotiation of an international trade agreement."[32] Perhaps most importantly, however, the provinces praised the appointment of John Weekes as the federal chief negotiator for the NAFTA and suggested that the different "styles" of Weekes and Reisman were a major reason why the provinces were more involved than they had been during the FTA negotiations. One provincial official felt these improved linkages were due to the fact that "Weekes had much more trade experience than Reisman and knew it was important to involve the provinces as much as possible." At the same time, however, the same official also suggested there were other non-trade related reasons for provincial satisfaction with the CNAFTN process. "When it comes right down to it Weekes just wasn't as much of an asshole as Reisman."[33]

Cooperation between both levels of government was evident throughout the CNAFTN process, especially in terms of to the amount of information provided to the provinces. Ottawa gave the provinces copies of every draft proposal tabled by the United States and Mexico and information was forwarded on a number of specific sectoral issues. There were also several occasions when the provinces had access to material that had not yet been reviewed by Cabinet. The provinces also believed they had a direct influence on the proposals the Canadian delegation submitted during the negotiations. According to one provincial representative the "CNAFTN process essentially involved the federal government tabling draft proposals and the provinces would take these documents and push for changes at future CNAFTN meetings. Most of the provinces also had working groups involved in the CNAFTN meetings consisting of different government departments depending on the sectors being discussed."[34] Even federal officials conceded that linkages between Ottawa and the provinces were now extremely formalized. In the words of one representative "we have even gotten to the point where a CNAFTN meeting can be held within a couple of hours using a conference call." The same official also said that it was "pretty clear that CNAFTN, which has now replaced the CFTA, will become CNAFTA

and at some point these continental trade committees will merge with those related to the GATT forming some sort of CTRADE."[35]

The CNAFTN process marked an important step in the evolution of formalized linkages between Ottawa and the provinces. There is, however, some question as to what this actually means in relation to provincial empowerment. Some see a formalized committee system as an important step toward a greater provincial role in the formulation of Canadian foreign economic policy. Others see the institutionalization of this process as a means of limiting the influence of provincial governments. As with the ITAC and SAGITs, critics of the federal-provincial committee system point to the institutionalization of these linkages as nothing more than a means of co-opting potential opponents of these international agreements into the policy process. There is evidence to suggest that the federal government has had less success controlling the provinces than the private sector, especially considering Ontario's vocal opposition to both the FTA and the NAFTA. Nonetheless, it would appear that Ottawa continues to view elite accommodation as a means of limiting the influence of provincial governments on the policy process. Other observers close to the NAFTA negotiations also saw Ottawa's commitment to information sharing as a means of further limiting the ability of provincial governments to influence the Canadian negotiating team. By overwhelming the provinces with detailed information on a number of issues several provincial delegations in the CNAFTN could simply not keep up with the federal agenda and, therefore, were limited in the policy areas in which they could hope to have any influence. According to one provincial official "there were times when the CNAFTN meetings were a bit of a joke. Some of the sectoral discussions got into such specific detail that there were very few people in the room that knew what anybody was talking about."[36] As one federal official noted, however, "the provinces wanted to have greater access to this information so that's what they got. If they can't figure things out or keep up with the pace that's not our problem."[37]

Based on these comments it would appear that Ottawa has been successful in limiting the influence of the provinces in the formulation of Canadian foreign economic policy. Even provincial officials have suggested that the role of the provinces in this area of trade policy is often exaggerated. According to one representative, the reality of provincial activity in such forums as the CNAFTN is "little more than consultation. Any greater role has simply no basis in reality."[38] Still another provincial representative noted that the committee for international trade was "simply an extension of federal-provincial relations and nothing more."[39] At the same time, however, there is also an acceptance on the part of most provincial governments that the CNAFTN improvements were a positive development. Most officials, for example, deny accusations that Ottawa attempted to co-

opt the provinces by allowing limited access to the policy process. Several representatives suggested that the provinces biggest problem was a lack of resources as opposed to any great federal conspiracy to exclude domestic groups from the policy agenda. As was the case in a number of CNAFTN meetings provincial delegations simply did not have the bureaucratic resources or expertise to control or influence all aspects of the trilateral negotiations. According to one provincial official "if there was any effort by the federal government to co-opt the provinces it was in the area of trade promotion. Ottawa has become increasingly concerned about provincial competition in international forums and has attempted to coordinate as many provincial initiatives as possible. This same control, however, has not extended itself to the domestic level in terms of federal-provincial negotiations relating to international economic agreements."[40]

What then is the actual role of the provinces in the formation of Canadian foreign economic policy? These comments suggest that varying opinions on the issue exist even amongst provincial officials. From the preceding discussion, however, the evidence suggests that international economic regimes have intruded on domestic jurisdiction and in doing so have forced states to accommodate domestic actors not traditionally part of the policy process. To date in Canada the federal government has continued to rely on its traditional means of co-opting domestic actors, within a framework of elite accommodation. At the same time, however, these efforts raise a number of questions regarding the long-term evolution of these linkages and the possible impact they might have on both federal and provincial autonomy. By responding to international pressures in this manner, for example, has the federal government failed to acknowledge the potential constitutional significance of further entrenching the committee system? Furthermore, has Ottawa's reliance on these linkages really increased provincial autonomy at the expense of the federal government? Federal officials may be correct in downplaying the significance of current federal-provincial consultation but as the committee system becomes more formalized the constitutional legitimacy of the provinces in this area of trade policy will continue to increase. Obviously, these developments have important ramifications for Ottawa in terms of its ability to pursue independent policy initiatives at both the domestic and international levels. At the same time, however, it would be wrong to look at the committee system as simply increasing the power of the provinces in relation to the federal government. These brokerage mechanisms appear to reinforce the regional political economy of Canadian federalism. The federal government was also able to restrict the actions of the provinces during the NAFTA negotiations. As the next chapter suggests, Ottawa's ability to maintain some control over the policy process is not the only factor that threatens to limit provincial influence in the future.

The Committee System - The Potential for Constitutional Change

What does this discussion suggest about the long-term constitutional legitimacy of the provinces in this area of trade policy? The increasing intrusiveness of international economic regimes and the current constitutional environment in Canada both suggest that Ottawa's attempts to co-opt provincial influence in the policy process is, at best, a short-term solution. As one observer has noted, "short of a constitutional amendment to both strengthen the federal government's jurisdiction over trade and treaty matters, and to improve its ability to represent regional interests, the evolved role of the provinces is here to stay."[41] The fact that Ottawa used the Committee on Multilateral Trade Negotiations (CMTN) to consult with the provinces during the recently completed Uruguay Round of GATT negotiations is further evidence of the federal government's intention of allowing an increased provincial role in future negotiations. The key, however, is to determine whether or not the new committee system represents a significant departure from Ottawa's traditional approach of attempting to co-opt the provinces.

The simple reality of contemporary Canadian federalism is such that provincial governments are the main articulators of regional interests in Canada for both economic and non-economic issues. This is due not only to the constitutional powers of the provinces in a number of issue areas but also to the weak level of regional representation in federal institutions. As the GATT and NAFTA have made clear, the changing nature of trade policy has forced Ottawa to look to the provinces for input on issues that are primarily under provincial control. The provinces have essentially been forced to intervene on these matters simply because there are no effective forums for regional advocacy and brokerage at the federal level. As Donald Smiley pointed out, "the constitutional division of powers between Parliament and the provinces underlies a situation in which two orders of government are highly interdependent but are not related to one another through hierarchical structures of power."[42] As the policy process has evolved in Canada, both in terms of domestic policy and international economic policy, the interdependence between both levels of government has reached a point where coordination is necessary whether the Constitution confers explicit powers over matters at one level of government or the other. As such, "a continuous process of federal-provincial consultation and negotiation is at the heart of the Canadian federal system."[43]

As previously noted, Smiley referred to these federal-provincial linkages as "executive federalism."[44] Smiley's analysis of executive relations was not linked to the role of the provinces in the formulation of Canadian foreign economic policy, but the committee system that first emerged during the Tokyo Round is consistent with his

examination of federal-provincial relations. Smiley was primarily concerned with the growing number of meetings, contacts and communications that developed between top federal and provincial officials during the framing of constitutional proposals and the negotiation and implementation of these agreements. Michael Stein has observed that "these relations have occurred intermittently over much of this century, and almost continuously in the last 25 years during intensive efforts at comprehensive constitutional renewal."[45] Executive discussions on these issues were historically closed-door meetings that allowed only minimal access to the media and other non-governmental observers. Therefore, the process of executive federalism, and the policies that emerged from these discussions, were often unknown to the public and largely ignored by elected representatives at both levels of government. As Stein noted, they are, "in short, highly elitist structures, whose institution, composition, and decision-making processes seem to reflect the antithesis of the representative and participatory norms associated with the institutions of liberal democracy in the current age of popular sovereignty."[46]

Criticism notwithstanding, executive federalism has evolved as a direct result of a lack of brokerage mechanisms at the federal level of government. As one federal official so profoundly noted, the fact that the Senate is filled with a "bunch of hacks" removes a potential institutional body for regional representation in Canada that serves the same purpose more adequately in the United States.[47] Put simply, executive federalism exists because it has to exist. Whether constitutional or economic matters are the issue the interdependence between Ottawa and the provinces that Smiley refers to is such that consultation and negotiation is a necessity. In the case of trade policy "the provincial role as chief advocate for regional interests, when combined with the constitutional authority of the provinces in so many matters related to trade policy, creates the conditions for federal-provincial relations in trade policy."[48] As Douglas Brown is quick to point out, "the one factor feeds on the other, lending political legitimacy where legal force alone may not suffice."[49] Although the federal government maintains considerable power over jurisdictional matters of trade policy, as well as the ability to reflect regional interests to a certain degree, the "combination of factors described here, especially the evolution of executive intergovernmental relations so well entrenched in recent decades, has meant that the federal-provincial dimension has become increasingly more complex and prominent."[50]

As a result, Ottawa's response to the developing intrusiveness of international economic regimes does not mark a profound departure from previous models of elite accommodation. The current committee system is consistent with prior attempts to facilitate a dialogue between Ottawa and the provinces on other, non-economic, issues. The importance of the Tokyo Round developments, however, are not linked to the on-going use

of executive federalism in Canada. The real significance is that developments in the international system have directly influenced the agenda of Canadian federalism. Federal-provincial consultation was no longer simply a result of domestic constitutional concerns. The intrusiveness of the GATT touched on a number of areas of provincial jurisdiction and Ottawa responded in the only way it knew how, namely by establishing consultative ties with the provinces through a number of committees. Although these linkages were relatively modest, and designed primarily to appease regional "political" concerns, it soon became apparent that executive federalism was to provide an important means of articulating provincial interests in the formulation of Canadian foreign economic policy. As these linkages continue to evolve it is arguable that the long-term constitutional legitimacy of these institutions will also increase.

To date, there is little evidence to suggest that either level of government has acknowledged the potential constitutional significance of the federal-provincial committee system on international trade. Due to the failure of Meech Lake and the Charlottetown Accord it is generally accepted that constitutional renewal of any kind in Canada will not take the form of a formal amendment. In fact, Peter Meekison, a long time observer of federal-provincial negotiations, suggests that the future of Canadian constitutional reform will be much different in the post Meech and Charlottetown era. Meekison argues that methods of pursuing constitutional change are available that do not include the use of "mega-amendments." If these alternatives are successfully pursued, he believes that "the demand for formal constitutional solutions should fade. Of equal importance, the emotions aroused as we have attempted formal amendments should also fade."[51] Therefore, in the absence of formal amendments, methods such as convention, statutes, and judicial interpretation will be used to make required constitutional changes. In sum, the evolution of Canada's constitutional arrangement, despite the repeated efforts of politicians for close to three decades, does not solely rest on the use of formal binding amendments.[52]

As a result, it is possible that methods of elite accommodation, such as the federal-provincial committee system on international trade, will one day be accepted as a formalized institutional linkage between both levels of government based on constitutional convention or practice. Further, there is also the possibility of a provincial judicial challenge of the federal treaty-making power and/or the trade and commerce power. Clearly, if Meekison is correct in his suggestion that Canada is about to enter a transitional period of constitutional change the on-going institutionalization of federal-provincial linkages in the formulation of Canadian foreign economic policy has considerable significance. This is not to say that all federal-provincial committees will gain equal constitutional recognition. While this is a long-term possibility it is important to define the distinctions between committees such as

CNAFTN and those dealing with other intergovernmental issues. The key difference is that the evolving committee system on international trade is essential for the implementation and enforcement of agreements such as the NAFTA. Currently the federal government has no other consultative mechanisms to deal with the provinces on matters of international economic policy. As economic regimes become more intrusive there will be mounting pressure to ensure both the compliance of the provinces and the formal institutionalization of these linkages. Even if the new committee system is not formally entrenched in the constitution, however, it will arguably gain increasing legitimacy as a forum for these issues in much the same way First Ministers' Conferences evolved during the previous century.

Although the evolution of the committee system has not yet resulted in a formal constitutional amendment it would be wrong to dismiss the current status of these linkages as irrelevant to Canadian federalism. There is considerable evidence to suggest, for example, that the committee system has had a direct impact on Ottawa's ability to develop interventionist economic policy. This is especially clear during the FTA negotiations when the Mulroney government attempted to limit areas of provincial jurisdiction included in the final agreement given the questionable constitutional status of federal treaty making powers. As such a number of anticipated areas of domestic jurisdiction were absent from the final text of the FTA. In excluding areas of provincial jurisdiction, however, Ottawa also essentially exempted the provinces from a number of the restrictions of the agreement. While it is true that provincial trade practices have continued to be subject to U.S. protests and attacks, such as those in the softwood lumber industry, it is the practices and policies of the federal government that are the focus of the agreement. These restrictions limit the policy options available to Ottawa in terms of the formulation of both domestic and international policy but do not extend the same limitations to the provinces.

Therefore, even though the committee system in its current state is simply a reflection of more traditional forms of executive federalism its impact is evident in its effects on federal autonomy, both internationally and domestically. Although the final text of the FTA was relatively devoid of areas of provincial jurisdiction the negotiation of the deal with the United States forced Ottawa to open a dialogue with the provinces on these issues. In doing so the federal government chose a method of co-opting potentially disruptive domestic actors it had traditionally relied on in the past. The early ITACs and SAGITs are a good example of this practice at work. In using executive federalism as a means of soliciting domestic opinion and giving these actors the perception they were involved in the policy process Ottawa managed to maintain a considerable amount of control in the formulation of Canadian foreign economic policy. At the same time,

however, the on-going evolution of the committee system during the FTA negotiations established a further precedent for provincial involvement and a loose infrastructure for greater participation in the future. As international economic regimes continue to force Ottawa to deal with more areas of provincial jurisdiction the provinces have a forum with increasing legitimacy in which to pursue issues of regional concern. This in turn further limits the independent policy options available to the federal government. In relying on executive federalism as a means of dealing with the provinces it can be argued that Ottawa has failed to acknowledge the potential long-term impact these linkages might have on its ability to formulate independent policy initiatives.

Conclusion

As a result of increasing globalization in the post-war period, trade policy has irrevocably changed, as have the international economic regimes designed to monitor and control the traditional exchange of commodity-based goods. In the process Canada and other states have come under increasing pressure from these rules based agreements. As international economic regimes intrude into areas of domestic legislation regional economic strategies are altered as are the roles of domestic actors involved in the formulation of trade policy. This is especially evident in Canada with the increasing dominance of foreign economic policy on the agenda of Canadian federalism. In response to the content and negotiation of international economic agreements Ottawa has initiated a series of executive linkages with its provincial counterparts designed to ensure the support and compliance of the provinces. By selecting a model of elite accommodation for this purpose, what Smiley refers to as executive federalism, the federal government has relied on a traditional means of incorporating potentially disruptive domestic actors into the policy process.

In doing so, however, it can be argued that the constitutional significance of these federal-provincial linkages has become increasingly more important in the aftermath of the Meech Lake and the Charlottetown Accords. Evidence suggests that Ottawa and the provinces have yet to recognize fully the potential long-term importance of the committee system on international trade but one thing is certain. The expanding intrusiveness of international economic regimes has had a direct impact on the agenda of Canadian federalism. If the recently completed North American Free Trade Agreement offers any insight into the future of Canadian foreign economic policy, it is that pressure from international regimes is unlikely to diminish as Canada rapidly approaches the end of the twentieth century. In addition, it is important to consider the potential long-term constitutional importance of the existing committee system. While it is maybe nothing more than an extension of traditional methods of elite accommodation, it also limits federal

autonomy in both domestic and international policy initiatives. If nothing else, this demonstrates the growing vulnerability of states in an international system increasingly dominated by intrusive interdependence.

Endnotes

1. Sean Riley, "Federalism and Canadian Trade Policy: The Early Days of the Mulroney Government," in Tom Keating and Don Munton, eds., *The Provinces and Canadian Foreign Policy, Proceedings of a Conference, University of Alberta, March 28-30, 1985* (Toronto: Canadian Institute of International Affairs, 1985), p. 46.
2. Gilbert R. Winham, "Bureaucratic Politics and the Canadian Trade Negotiation," *International Journal*, 34 (Winter 1978-79), p. 73.
3. Douglas M. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," in Douglas M. Brown and Murray G. Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* (Kingston, Ontario: Queen's University Institute of Intergovernmental Relations, 1991), p. 91.
4. Ibid., p. 92.
5. Ibid., p. 93.
6. Riley, "Federalism and Canadian Trade Policy: The Early Days of the Mulroney Government," p. 47.
7. Ibid.
8. Michael M. Hart, *Canadian Economic Development and the International Trading System: Constraints and Opportunities* (Toronto: University of Toronto Press, 1985), p. 77.
9. G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart Publishing, 1991), p. 128.
10. Ibid., p. 129.
11. Ibid., pp. 129-30.
12. Personal interview with confidential source, February 11, 1994.
13. Ibid.
14. Doern and Tomlin, *Faith and Fear: The Free Trade Story*, p. 130.
15. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," p. 94.
16. Ibid., pp. 94-95.
17. Douglas M. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," in Douglas M. Brown and Earl H. Fry, eds., *States and Provinces in the International Economy* (University of California, Berkeley and Queen's University: Institute of Governmental Studies Press and Institute of Intergovernmental Relations, 1993), p. 111.
18. Personal interview with confidential source, February 11, 1994.
19. Judith H. Bello and Gilbert R. Winham, "The Canada-USA Free Trade Agreement: Issues of Process," in Leonard Waverman, ed., *Negotiating and Implementing a North American Free Trade Agreement* (Vancouver: The Fraser Institute/Centre for International Studies, 1992), p. 33.
20. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," p. 113.
21. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," p. 95.
22. Bello and Winham, "The Canada-USA Free Trade Agreement: Issues of Process," p. 34.
23. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," p. 114.
24. The implementation of the FTA in areas of provincial jurisdiction was still a concern of both levels of government following the negotiations. Article 103, the FTA's "federal state clause", was interpreted by some observers as more binding than Article XXIV(12) of the GATT and provincial critics suggested Ottawa might begin to unilaterally exercise its control in specific areas of domestic jurisdiction. As a result, a number of provinces were apprehensive about federal implementing legislation even though the final text of the agreement did not significantly impinge many of the anticipated areas of exclusive

jurisdiction. Ottawa eventually decided against enforcing the FTA by law in each province and instead chose a less intrusive approach. Bill C-130, *An Act to Implement the Free Trade Agreement Between Canada and the United States of America*, was passed in Parliament but ultimately only amounted to a vague warning to the provinces in regard to compliance in areas of federal jurisdiction. No province countered Bill C-130 with its own implementing legislation although Alberta did table a bill, Quebec issued a decree, and Ontario passed four pieces of legislation that more or less said it would do what it wanted regardless of the FTA. These were not considered to be a threat to the federal bill, however, and Ontario made notice of its desire to cooperate by settling an outstanding wine issue with Ottawa in March 1989.

25. Personal interview with confidential source, February 10, 1994.
26. Personal interview with confidential source, February 23, 1994.
27. Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Issue Number 21, May 11, 1993* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1993), p. 7.
28. Ibid., pp. 6-7.
29. Bello and Winham, "The Canada-USA Free Trade Agreement: Issues of Process," p. 47.
30. Ibid., p. 50.
31. Personal interview with confidential source, January 27, 1994.
32. Personal interview with confidential source, February 11, 1994.
33. Personal interview with confidential source, February 9, 1994.
34. Ibid.
35. Personal interview with confidential source, February 11, 1994.
36. Personal interview with confidential source, February 8, 1994.
37. Personal interview with confidential source, February 11, 1994.
38. Personal interview with confidential source, February 21, 1994.
39. Personal interview with confidential source, February 23, 1994.
40. Personal interview with confidential source, January 27, 1994.
41. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," p. 135.
42. Donald V. Smiley, *The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson Limited, 1987), p. 85.
43. Ibid.
44. Donald Smiley coined the term "executive federalism" to explain the bureaucratic interaction of elites between both levels of government. For a brief overview of Smiley's work on executive federalism, please see Donald V. Smiley, "Federalism and the Public Policy Process," in Peter J. Meekison, ed., *Federalism, Myth or Reality?* 2nd ed. (Toronto: Metheun, 1971), pp. 43-51, Donald V. Smiley, *The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson, 1980), and Donald V. Smiley, "An Outsider's Observations of Federal-Provincial Relations Among Consenting Adults," in R.D. Olling and M.W. Westmacott, eds., *Perspectives on Canadian Federalism* (Scarborough, Ontario: Prentice Hall Canada, 1988), pp. 279-284.
45. Michael B. Stein, "Tensions in the Canadian Constitutional Process: Elite Negotiations, Referendums and Interest Group Consultations, 1980-1992," in Ronald L. Watts and Douglas M. Brown, eds., *Canada: The State of the Federation 1993* (Kingston, Ontario: Institute of Intergovernmental Relations, 1993), p. 88.
46. Ibid.
47. Personal interview with confidential source, February 11, 1994.
48. Brown, "The Evolving Role of the Provinces in Canada-U.S. Trade Relations," p. 100.
49. Ibid.
50. Ibid.

51. J. Peter Meekison, "Let There be Light," in Watts and Brown, eds., *Canada: The State of the Federation 1993*, p. 61.

52. Meekison notes that much of Canada's current constitution consists of convention or usage. Although these practices may not be part of the written constitution they have evolved over time and are arguably as important. Statutes can also be used to provide substance to what may be areas of a written constitution that may not be completely clear in terms of power and responsibilities. While statutes may not have the same impact as a formal constitutional amendment Meekison believes they are still important constitutional building blocks. Finally, judicial interpretation has historically had a profound impact on the evolution of the Canadian constitution since confederation. Following the implementation of the Canadian Charter of Rights and Freedoms in 1982 much more of the Canadian constitutional experience has been opened up to judicial review.

CHAPTER 6

The NAFTA Side Deals

Introduction

The environment and labour Side Deals of the North American Free Trade Agreement offer yet another example of the increasing intrusiveness of international economic regimes. The North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labour Cooperation (NAALC) not only address the difficult non-tariff issues of labour and the environment, but include issues and interests that fall specifically within areas of provincial jurisdiction. While the Side Deals do not establish a comprehensive North American labour or environmental regime, the agreements do represent an important development in the evolution of continental free trade. For Canada, however, the Side Deals have other implications, especially in terms of Canadian federalism. Given that labour and the environment are both areas of provincial jurisdiction there are a number of references to the provinces in both agreements. Federal autonomy was also limited during the negotiations due to Ottawa's dependence on provincial expertise. More importantly the provinces and the federal government have now entered into negotiations to develop a formal compliance mechanism that would bind both levels of government to the Side Deals. Several provinces have already made it clear that they consider the addition of this agreement to be precedent setting in terms of guaranteeing provincial participation, as opposed to consultation, in future international trade

negotiations. In addition, there is speculation that any formal compliance mechanism may also have long-term constitutional significance that, unlike the current NAFTA committee system, is not directly tied to the already well established tradition of executive federalism.

Environment, Labour and the Original NAFTA Negotiations

Interest in environmental and labour considerations in relation to international trade did not originate with the side deals. In fact, it can be argued that a North American environmental regime has been evolving for several decades, especially in terms of Great Lakes water control and air quality concerns such as acid rain.[1] The side deals, however, marked the first time these issues were dealt with as part of an international trade agreement. The possibility of supplemental accords on labour and the environment were actually discussed at length during the original NAFTA negotiations. John Weekes, the NAFTA's Chief Negotiator, recalled that labour and environmental issues were at the forefront of Canadian concerns going into the trilateral negotiations. In his testimony to the Senate Standing Committee on Foreign Affairs Weekes recalled that the issues of labour and the environment dominated the agenda after he returned to Canada from Geneva in the Spring of 1991. In fact, Weekes testified that "the first memorandum we prepared for Cabinet in that period addressed those issues in considerable detail and I began to wonder whether, as Chief Negotiator, for the NAFTA, I was ever going to be able to deal with anything other than environmental and labour issues."[2] Canada's position on labour and the environment was not inconsistent with other commitments Ottawa made during the early 1990s. Canada also negotiated a Memorandum of Understanding (MOU) on labour matters with Mexico and the federal government intensified a program of cooperation that existed under an existing environmental agreement signed by Prime Minister Mulroney and President Salinas. As a result, Weekes felt that "the NAFTA was a trade agreement more sensitive to the environment than any trade agreement previously negotiated."[3]

While labour and environmental concerns were overshadowed by other issues during the original negotiations, there is reference to both of these matters in the final text of the NAFTA. Commitments to environmental protection are cited throughout the agreement and the promotion of sustainable development is included in the NAFTA's list of objectives. The Annex of the NAFTA also makes direct reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste, and the Agreement

Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area. All three signatories also pledge a commitment to protecting human, animal, or plant life in the NAFTA chapters dealing with standards related measures. Although Canada, the United States and Mexico are not forced to adopt a basic level of standards these measures must be based on "relevant international standards, or in the absence of such standards or given the inappropriateness of the standards because of fundamental climatic or geographical factors, be based on a scientific justification or a socially and economically desirable level of protection."[4] Provisions are also made to ensure that, wherever possible, technical standards will be harmonized to facilitate trade.

The NAFTA chapter on investment also addresses concerns in the United States and Canada that weak environmental standards in Mexico might contribute to industry relocation and loss of investment. The text states that member countries "recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly a country should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor."[5] In addition, Ottawa has cited the significance of the quality of labour and capital, the regulatory and tax environment, the exchange rate, geography, proximity to supply sources and the costs involved with relocation as important factors influencing foreign investment.[6] These variables were not directly mentioned in the final text of the NAFTA but the Canadian government suggested it was willing to take these matters into consideration in future investment negotiations.

While it would be a mistake to characterize the NAFTA as a significant step forward in strengthening any existing continental environmental regime, it is important to recognize that the original agreement did make reference to a number of these issues. In the case of labour, however, the NAFTA is relatively silent. The preamble of NAFTA states that the signatories of the text will work to protect, enhance and enforce basic workers' rights, but there are no specific provisions related to labour protection in the agreement. Of specific concern to Canada and the United States was the issue of social dumping. Social dumping "occurs where production costs are lowered through inadequate labour and environmental protection. This aspect of competition can take the form of increased imports from, or investment flight to, low standards jurisdictions and is a deliberate practice aimed at improving corporate bottom lines at the expense of workers and communities in both the host and importing countries."[7] Concerns over labour standards and social dumping were directly linked to Mexico's *maquiladora* program. The program, initially established in

1965 as the Border Industrialization Program, was designed by Mexican officials as a means of alleviating unemployment problems in northern Mexico. Maquiladora plants "export labour services that are incorporated into products assembled in Mexico and consumed in foreign markets, mainly the United States, based on duty-free inputs from those markets."[8] The common criticism of the maquiladora program has been the fact that it exists only to exploit low wage Mexican workers and has not been integrated into Mexico's industrial structure. Naturally, a number of companies in Canada and the United States were worried about the unfair labour advantage Mexico might have under a more open liberalized continental trading arrangement.

Critics of maquiladoras stress the fact that these industries use young women, and sometimes even children, as sources of cheap labour. These observations are based on traditional maquiladoras in the garment industry, basic semi-conductor assembly, and other types of light manufacturing. These labour-intensive maquiladoras continue to generate employment and foreign exchange, but have done little in terms of developing the Mexican industrial structure. In recent years, however, maquiladoras have expanded into more sophisticated forms of production, especially in the automobile sector and the advanced electronics industry. These new-style "maquiladoras are significant because they demonstrate that sophisticated, high quality exports can be produced in Mexican plants using advanced production technologies."[9] Supporters of the "new wave" maquiladoras note that these industries "open up the possibility that they could help Mexico move to a higher level of development by fostering greater technology transfer and the training of a skilled and well educated workforce, thus enhancing Mexico's integration into the global economy in a more advantageous competitive position."[10] Further, other supporters of liberalized trade also suggest that some relocation is inevitable in sectors where wages make up a large proportion of total costs. "Producers are already moving this kind of production elsewhere. If it does not go to Mexico, it will go somewhere else."[11] The only alternative is to support domestic industries with protectionist policies with the consumer paying the price.

Regardless, many observers were highly critical of the NAFTA's failure to adequately address labour issues. These concerns were not related to the absence of domestic labour law in Mexico. In fact, there is considerable Mexican legislation that appears to guarantee a wide range of workers rights. Labour law in Mexico, assembled in the 1970 Federal Labour Act, extends to all states, including the northern maquiladora regions, and covers both unionized and non-unionized wage earners. There is a National Minimum Wage Board, that sets minimum wages in 88 professions and trades, and the Mexican legal system has provisions that allow it to regulate labour relations much more

extensively than in the United States. Mexico has ratified more International Labour Organization (ILO) agreements than either Canada or the United States. The problem in Mexico, however, is that these provisions are rarely enforced. To that end, both Ottawa and Washington entered into negotiations with the Mexican government prior to the completion of the original NAFTA negotiations. The U.S. Department of Labour and Labour Canada "each signed an agreement with the Mexican Secretaria del Trabajo y Prevision Social, in May 1991 and May 1992, respectively. These agreements called for exchanges of information, the realization of joint studies in the field of occupational health and safety, collective agreements and labour conflicts, and social security measures."[12] Questions remain about the exploitation of the maquiladora sector and the questionable enforcement of domestic legislation. It is generally accepted, however, that even though labour standards were not directly addressed in the original agreement "Mexico possesses the legal structures, institutions, and organizations that can facilitate cooperation between the three countries against the backdrop of competition inherent in the NAFTA."[13]

The prospect of more inclusive NAFTA-related agreements on labour and the environment returned to the forefront of debate during the United States presidential elections of November 1992. During the campaign against then President George Bush, Bill Clinton staked out his position on the NAFTA during a speech given in North Carolina. Then Governor Clinton, faced with the dilemma of how to endorse an agreement that was a major cornerstone of the Bush administration, indicated he would support the NAFTA "provided it was situated in a broader economic context that would also provide side agreements dealing with cooperation in the area of labour and the environment."[14] Following Clinton's election Michael Wilson, Canada's Minister for International Trade, made it clear that the new American concerns would not be a major stumbling block in the successful outcome of the trade negotiations. Speaking before a House of Commons sub-committee examining the NAFTA Wilson noted that the "president-elect is intent on seeing reasonable expeditious passage of NAFTA" and that he "expected the [new] United States administration to honour the agreement."[15] Wilson re-affirmed his position in testimony to a Senate Standing Committee on Foreign Affairs several months later when he stated that Canada was "supportive of the side agreements in principle. As you recall, in February of 1992 we put forward the idea of side agreements in both labour and the environment. The previous administration [in Washington] did not want to pursue that concept, but we were pleased when the current administration decided it wanted to reawaken that thought."[16]

The Side Deal negotiations were initiated with relatively modest goals. According to Robert Clark, the Deputy Chief Negotiator for the NAFTA, discussions began with the objective of improving trilateral cooperation in the hopes of strengthening labour and

environmental standards without dictating common measures on these issues for any of the countries involved. The starting point was not the "creation of a common or lowest-common-denominator list or floor of standards. Rather it was to... agree on how to build assurance and confidence that each [government] would observe, through enforcement of their respective national laws and regulations, those labour and environmental standards which they now had."[17] Early in the negotiations, however, it became clear that the United States Congress was going to push Clinton to seek mandatory sanctions on violations of labour and environmental standards. As one former U.S. official suggested, Clinton saw the side agreements as a "campaign fig leaf. The president... knew he had to be for NAFTA because it was good for the United States, for the other partners, and for hemispheric relations. However, given that he did not want to be paired with the then sitting president, he said 'Okay, it is not a bad agreement, but the only way I can accept it is with some whistles and bells on it.' Now Congress is demanding that the whistles and bells be strong and permanent and have some real effect."[18]

Canada did not immediately dismiss the idea of sanctions. In fact, federal officials were of the opinion that existing labour and environmental laws in North America, including Mexico, were of high standard. Canada's main concern centred on the lack of enforcement of existing legislation. When it came time to table the draft texts of the accords in May of 1993, however, it became clear that Ottawa no longer supported enforceable sanctions. In its response to the draft texts Canada rejected the American proposals as "adversarial and prosecutorial" adding that the "use of trade sanctions was a mistake."[19] Interestingly, the Mexican and Canadian submissions both questioned the use of sanctions and called for "softer" linkages based on "mutual reassurance" and "practical cooperation." Specifically, Canada dismissed the use of sanctions on the grounds that labour and environmental measures could be abused by various interests for protectionist or commercial purposes. According to Weekes, sanctions would be used "to harass competitors, rather than to try and promote a better environment or higher labour standards." Weekes went on to say that "if you make sanctions too tough you might also discourage parties from further increasing the level of their standards in the environmental or labour area. If they increase the protections under their law and raise the bar on the standards, then they will be held accountable to enforcement at that higher level, with rather severe punishment if they do not."[20] Canadian officials were quick to point out that their opposition to sanctions did not preclude the hope that the NAFTA side deals would help contribute to the upward movement of labour and environmental standards. Ottawa simply believed that these goals could be achieved through broad programs of cooperation and by creating an environment that promoted the exchange of experts and information.

The North American Agreement on Environmental Cooperation

The final drafts of the North American Agreement on Environmental Cooperation and the North American Agreement on Labour Cooperation were completed on September 13, 1993. The NAAEC established a Commission for environmental cooperation consisting of a Council, a Secretariat, and a Joint Public Advisory Committee. The Council, which was to meet once a year in regular session, would consist of cabinet-level representatives from the signatory states. Special sessions could be held at the request of any party. The Secretariat was to provide technical, administrative and operational support to the Council and other committees established by the Council. An Executive Director would head the Secretariat for a three year term and the position would be rotated consecutively between nationals of each party. The Secretariat was also responsible for preparing the annual report of the Commission and any other environmental reports that were related to the agreement. The Council, however, had the power to veto submissions with a two-thirds vote. In addition, the Secretariat had the authority to review written submissions from non-governmental organizations and/or individuals making claims regarding the violation of environmental standards. Based on this information the Secretariat then had to decide if a written response from the accused party was in order. Once the accused party replied to the submission the Secretariat, based on a two-thirds vote, would then decide if a Factual Record should be prepared. Any Factual Records, with the support of two-thirds of the Council, would be released to the public within 60 days following their completion. The NAAEC also called for the formation of a Joint Public Advisory Committee consisting of 15 members with equal representation from each member state. The Committee was to serve as a source for relevant technical, scientific or other information needed by the Secretariat in preparing an Annual Report, Secretariat Report, or a Factual Record.

From a brief review of the structure of the Commission it is clear that the NAAEC is open to political manipulation and relatively closed to non-governmental access. The Council's ability to cancel an environmental complaint with a two-thirds vote provides a number of opportunities to limit the scope and effectiveness of the agreement. It also allows states to enter into political and economic alliances on issues being reviewed by the Commission to eliminate investigations based on sound environmental considerations. The limited scope of the Commission is further reduced given the fact that non-governmental organizations are essentially eliminated from the process. Further, Factual Records have no enforcement mechanisms, are not binding on the accused party, and can also be stopped by a two-thirds vote. In addition, critics question whether or not the NAAEC supersedes the environmental provisions set out in the original NAFTA text. Article 103 of the

NAFTA, for example, states that whenever there is any inconsistency between the NAFTA and other agreements the provisions in the NAFTA text will prevail. Article 23(5) of the NAAEC also states that where "the Council decides that a matter is more properly covered by another agreement to which the consulting parties are party, it shall refer the matter to those parties for appropriate action in accordance with such other agreement or arrangement."[21] Therefore, the Council has the authority to disallow a submission to the Commission and forward it to the appropriate NAFTA or GATT dispute resolution panels effectively "passing the buck" on environmental concerns that may be damaging economically. Further, in the negotiations of the side agreements Canada, the United States, and Mexico all agreed that the "NAFTA could not be re-opened as a result of the [NAAEC] leaving the logical presumption that the [NAAEC] could not change or override NAFTA rules."[22]

The definition of "environmental law" included in Article 45(2) of the NAAEC also limits the scope of the agreement in terms of environmental protection. Article 45 states that environmental law includes "any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health." It excludes "any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources."[23] Critics of the NAAEC note that the exceptions listed under environmental law remove from consideration a number of resource management practices that have serious environmental repercussions. Specific practices include hydro-electric projects, clear cut forest harvesting, mining, and fishing rights. However, "since all of these are natural resource-based projects they are not subject to the [NAAEC]. Even an environmental assessment of these projects could not be completed under the agreement."[24] Article 24 further limits the applicability of the NAAEC by restricting complaints involving environmental law to "situations involving workplaces, firms, companies or sectors that produce goods or provide services: a) traded between the territories of the Parties; or b) that compete, in the territory of the Party complained against, with goods or services produced by persons of another Party."[25] Therefore, challenges to goods produced for domestic consumption are only applicable if those same goods are subject to competition from other NAFTA signatories. "If the goods produced are for exportation to any country except Mexico, the United States or Canada the [NAAEC] does not apply."[26]

The dispute settlement process outlined in Part 5 of the agreement is a positive development in the sense that trade practices can be formally submitted to a panel with the authority to rule on their environmental impact. At the same time there are aspects of the

dispute settlement process, namely its cumbersome procedures and lengthy time requirements, that greatly limit its impact. The first stage of the process, outlined in Article 22, calls for consultation between the parties involved. A complaint is submitted to the offending country by another state or sub-national governments and the two parties have 60 days to consult on the issue. Non-governmental organizations can initiate an action with the Secretariat for a Factual Record but these groups are not allowed direct access to the dispute settlement process. If no progress is made between the two parties a special session of the Council is convened to consider the complaint within 20 days of the delivery of the request. The Council then has 60 days to consult technical advisors and make recommendations on the written submissions. Article 23, however, states that any of the Parties involved can agree to suspend the process indefinitely and the Council has the right to delay the process if further technical advisors are required. As mentioned previously, Article 23(5) also authorizes the Council to dismiss the complaint at this time if it feels the matter would be more properly considered in another dispute settlement forum.

If there has been no extension of the consultation period and the Council is unable to facilitate a resolution then an arbitration panel is requested. Article 24(1) states that the Council, on the written request of any consulting party and by a two-thirds vote, can convene an arbitral panel to consider matters where a signatory has failed to enforce its environmental law effectively in a situation involving sectors that produce goods and provide services. In order for the process to continue to the arbitration level the Council must, once again, approve the measure by a two-thirds vote. Observers suggest that this opens the Council to "political" manipulation and raises the possibility that:

> while a dispute is taking place between two parties the point of view of the third party will actually determine whether the dispute proceeds. For political and commercial reasons that Party may not wish to consent to the continuation of the process. For instance, Mexico may decide that it does not wish to see any environmental matter proceed to dispute resolution knowing that in consenting to a challenge against the United States or even Canada, there may be retaliatory effects against Mexico's weaker environmental regime. ... According to the provisions of the [NAAEC] if the non-disputing Party does not consent to moving the dispute forward that effectively ends the dispute resolution process and any opportunity for applying the enforcement remedies provided in the Agreement.[27]

Critics also suggest that the wording of Article 24(1), which requires signatories to prove a "persistent pattern of failure" of environmental standards, provides a heavy burden of proof for any country making a complaint. Not only is the "persistent pattern" phrase vague but it also raises obvious questions surrounding the number of breaches of law that must take place before a "pattern" is established. As one observer has noted "what time frame is required to be met in establishing 'persistence'?"[28]

If these criteria are fulfilled an arbitration panel is selected to review the dispute. The panel, which consists of 5 individuals, a Chair and two members from each disputing country, is chosen from a roster of 45 qualified panelists maintained by the Council. The Chair is mutually agreed upon by both countries but if there is no consensus one of the disputing parties, selected by lot, chooses a roster member who is not a citizen of that country. Each state then selects 2 names of non-citizens to complete the panel. Based on the testimony of the parties involved, and any expert testimony that may be required, the panel submits a report within 180 days. Written responses to the initial report can be submitted to the panel within 60 days for further consideration on the matter after which the panel has 60 more days to table a final report. Based on the recommendations of the arbitration panel the Parties have the option of meeting and developing an independent "action plan" on the issue. If they are unable to reach a consensus, or if an agreed upon "action plan" is disputed, either Party can request that the arbitration panel can be reconvened to rule on the issue. If the problem is a lack of consensus the panel will rule in favour of one of the proposals or may, where warranted, impose a monetary enforcement assessment on the Party unreasonably delaying the implementation of a particular plan. If there is a dispute over the implementation of an agreed upon plan the panel has the authority to impose a monetary fine for non-compliance. In a case where imposed fines are not paid within a 180-day period Article 36 states that "any complaining Party or Parties may suspend... the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment."[29] Either Party can then request that the panel be reconvened to determine whether or not the suspension of benefits were excessive and/or if penalties were paid in full.

Annex 34 of the NAAEC outlines the procedure for determining monetary enforcement assessments. It is important to recognize that these assessments are fines and not sanctions. Critics of the agreement also suggest that unless the fines are very large there will be no incentive for environmental protection. In fact, "existing environmental laws already impose maximum fines in the $2 million range in addition to prison sentences for offenders. What is more, these penalties are leveled directly at polluters, thereby providing a stronger deterrent than penalties which are applied to national governments."[30] These same observers also suggest that Canada's pre-occupation with excluding sanctions from the NAAEC may have actually opened up Canadian industries to further trade harassment in other forums. By failing to develop an agreement with an appropriate enforcement mechanism Ottawa has not addressed the American practice of invoking sanctions on environmental and resource management programs. In failing to define "subsidies" in the original NAFTA text the United States is still able to challenge existing

Canadian environmental programs as unfair protectionist measures. For example, "British Columbia's restrictions on the export of raw logs were judged a countervailable subsidy by U.S. authorities. This decision has also been affirmed by a FTA dispute settlement panel. And the U.S. used Section 301 of its Trade and Tariff act to challenge Ontario's environmental levy on non-refillable alcohol containers."[31] As a result, sanctions based on environmental considerations are still applicable, and widely used, under the guidelines of the North American Free Trade Agreement despite their exclusion from the environmental accords.

For Canada, NAAEC compliance is a major issue due to the agreement's intrusion into areas of provincial jurisdiction. As such, there are mechanisms in the NAAEC, especially Annex 41, which deal with the issue of provincial compliance. The agreement states that Canada must deliver "a list of any provinces for which Canada is to be bound in respect of matters within their jurisdiction."[32] If a province refuses to participate in the NAAEC a number of rights are lost for Canada including the ability of non-governmental organizations to submit proposals to the Secretariat in the jurisdiction of the non-participating province. Canada also loses the right to launch a NAAEC dispute settlement process against another state in an area of provincial non-compliance unless Ottawa can prove the violation is also covered under federal jurisdiction. Specifically, the Annex states that Canada can only request panel proceedings concerning enforcement of environmental laws in the United States and Mexico if "the provinces included in the declaration account for at least 55 per cent of Canada's Gross Domestic Product (GDP) for the most recent year in which data are available, and ... where the matter concerns a specific industry or sector, at least 55 per cent of total Canadian production in that industry or sector is accounted for by the provinces included in the declaration for the most recent year in which data are available."[33] Further, Annex 41(5) states, that "No other Party may request a Council meeting under Article 23 or request the establishment of a panel or join as a complaining Party under Article 24 concerning whether there has been a persistent failure to effectively enforce an environmental law of a province unless that province is included in the declaration made under paragraph 1."[34] These specific guidelines for launching NAAEC disputes in areas of provincial jurisdiction are important for several reasons. If Canada is unable to get the needed number of provinces onside "a dispute resolution process may never be convened because the 'two-thirds' requirement in Article 24 could never be satisfied. This conclusion assumes that a Party complained against would never consent to a dispute resolution process which could very well result in a fine or sanctions being levied against it."[35] It is also important to note that the provinces, whether they are signatories to

the agreement or not, have no official standing in the NAAEC dispute settlement process. Submissions on disputes can only be presented by the federal government.

In reviewing the NAAEC it is clear that the agreement does not rigorously protect environmental concerns in North America. The successful negotiation of the agreement solved a political problem for the Clinton administration, but it did not create an enforceable regime for environmental standards. The NAAEC dispute process is slow and cumbersome. There is only minimal protection for natural resources, public access is questionable, and there are a number of loopholes that offer states escape clauses on these issues. The fact that the agreement enforces existing domestic law, as opposed to producing minimal standards for each country, is also a potential problem. At the same time it is necessary to acknowledge the NAAEC for what it does accomplish. If nothing else the shortcomings of the agreement create an agenda for future negotiations on these matters. Granted, these are difficult and complicated issues but the renewed focus of international economic regimes on environmental concerns provides an indication of the direction of future trade negotiations. A long-term strategy is essential if Canadian interests in these areas are to be protected.

North American Agreement on Labour Cooperation

Not surprisingly, there are a number of similarities between the North American Agreement on Environmental Cooperation and the North American Agreement on Labour Cooperation. The NAALC establishes a Commission comprising of a ministerial Council, composed of the labour ministers of the signatories, and a Secretariat designed to provide support and technical information to the Council. As with the NAAEC the labour Secretariat is responsible for the publication of an annual report and the preparation of studies on any matter the Council may request. The NAALC, however, also calls for the establishment of National Administrative Offices (NAOs) at the federal level in each state to act as a point of contact with government agencies, the NAOs of other Parties, and the Secretariat of the Commission. The NAOs are also responsible for the dissemination of information on domestic labour matters requested by the Commission's Council or Secretariat. There are further provisions in the NAALC for the implementation of National Advisory Committees and Governmental Committees at the domestic level of the signatories. These committees are designed to provide public and private sector information to advise governments on the implementation and further elaboration of this agreement.

Much of the criticism leveled at the NAAEC is also applicable to the NAALC. As Annex 1 makes clear, the agreement sets out "guiding principles that the Parties are committed to promote, subject to each Party's domestic law, but does not establish

common minimum standards for their domestic law."[36] Further, Article 2 affirms "full respect for each Party's constitution, and recognizes the right of each Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations."[37] Although Article 2 also states that "each Party shall ensure that its labour laws and regulations provide for high labour standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light" there is no mechanism in place to ensure these standards are met.[38] In fact, the definition of "labour standards" in Article 49 notes that "for greater certainty and consistent with the provisions of this Agreement, the setting of all standards and levels in respect of minimum wages and labour protections for children and young persons by each Party shall not be subject to obligations under this Agreement."[39] As a result, there is nothing in the side deal that prevents governments from changing or lowering existing labour legislation. As critics correctly point out the NAALC is, as its title suggests, essentially a cooperation agreement. It does not define minimum standards or adopt basic labour rights and standards, such as those defined through the International Labour Organization (ILO) conventions. As some observers have suggested, the NAALC "merely pledges the three parties to ensure the effective enforcement of their own labour laws."[40]

Disputes under the NAALC are subject to a process similar to the NAAEC. In the first stage, a NAO in one country notifies its opposite representative of an impending labour challenge. After both NAOs provide any requested information representatives from these offices meet in an attempt to resolve the dispute. If meetings at the NAO level do not provide a solution either Party, under Article 22 of the agreement, can request a meeting at the ministerial level. Although the NAAEC sets a 60 day time limit there is no similar provision for this stage of the NAALC dispute process. In fact, Article 22(3) is worded in such a manner that ministerial meetings could take place indefinitely. In the absence of a defined time limit Article 22(3) suggests that the "consulting Parties shall make every attempt to resolve the matter through consultations... including through the exchange of sufficient publicly available information to enable a full examination of the matter."[41]

If cooperative consultation fails to solve the dispute either Party can then request the establishment of an Evaluation Committee of Experts (ECE). Article 23 stipulates that the "ECE shall analyze, in the light of the objectives of this Agreement and in a non-adversarial manner, patterns of practice by each Party in the enforcement of its occupational safety and health or other technical labour standards as they apply to the particular matters considered by the Parties in Article 22."[42] At the same time, however Article 23 also states that ECEs are unable to rule on issues that are not trade related or covered by mutually recognized labour laws. These provisions set a rather rigorous test for convening an ECE. Not only

is the scope of the review limited to trade issues and/or areas of existing labour legislation that are mutually recognized but Article 23 also requires that a "pattern of practice" be identified that is in violation of the NAALC. Article 11 of the August 9, 1992 draft of the NAALC defines a pattern of practice as a "course of action or inaction beginning after the date of entry into force of the Agreement, and does not include a single instance or case."[43] Critics suggest that this "implies that it will not be sufficient to demonstrate that instances of non-enforcement are repeated. They must also be proven to be related in a pattern."[44] It is also pointed out that "patterns of practice" are to be established from implementation date of the NAALC, presenting another obstacle that further weakens the accord.

If these requirements can be met an ECE is established consisting of a chair and two other members selected from a roster developed by the Parties. The ECE can consider formal reports from a number of sources including the Secretariat, the NAO of each Party, the public, and any organizations or individuals with relevant expertise in its deliberations. Article 25(1) outlines a 120 day time limit for the ECE to table a draft report but also notes that the Council can extend this period if required. A final report by the ECE is to be tabled within 60 days of the draft report, but Article 26 also allows the Council to postpone indefinitely an ECEs submission if there is a need for further information or in order "to keep the matter under review."[45] In fact, Article 26 states that either Party has 90 days to offer a written response to the final report, if it is ever submitted, and then the signatories must wait until the next regular session, usually annually, of the Council before the matter is finally considered in its entirety. It is also at this stage that the Council has the authority to place the matter under an indefinite period of review.

If either Party is not satisfied with the final report of the ECE a written request can be submitted to the Council "regarding whether there has been a persistent pattern of failure by the other Party to effectively enforce such standards in respect of the general subject matter addressed in the report."[46] Before an arbitration panel can be convened, however, another series of rigorous requirements must be met. Under Article 28(5) the Council has the authority at this time to decide whether a "matter is more properly covered by another agreement or arrangement to which the consulting Parties are party, [and if so] it shall refer the matter to those Parties for appropriate action in accordance with such other agreement or arrangement."[47] As with the NAAEC this provision provides an opportunity for the Council effectively to "wash its hands" of an issue with political or economic consequences. Article 29(1) also stipulates that "the Council shall, on the written request of any consulting Party, and by a two-thirds vote, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labour or minimum wage

technical standards is: a) trade related; and b) covered by mutually recognized labour laws."[48] The "persistent pattern" of violations outlined in Article 29(1) presents a similar definitional challenge as earlier questions involving the NAALC's designation of a "pattern of practice." As critics of the NAALC have noted:

> A "persistent pattern" is defined as a "sustained or recurring pattern of practice." The definitions of "persistent pattern" and "pattern of practice" are disconcertingly vague. The "persistent pattern" standard is obviously intended to be a tougher criteria than "pattern of practice." Taken literally, it involves either a sustained pattern or a pattern of patterns. Nowhere is it stated how long a "pattern of practice" must be sustained or how many times the pattern must recur before it qualifies as a "persistent pattern."[49]

Article 29(1)'s requirement of a two-thirds vote and its reference to trade related and mutually recognized labour laws are two additional challenges preventing the formation of an arbitration panel in a disputed issue area.

If these conditions are met an arbitration panel, consisting of a Chair and four other individuals selected from the Council's roster of qualified members, is convened. The panel, which follows procedures very similar to those of the NAAEC, has the right to call witnesses and review submissions from either Party. Article 36(2) states that the panel should submit an initial report within 180 days but once again there is a provision that allows the deadline to be extended. After the first draft proposal is tabled either Party has 30 days to submit written comments to the panel which will consider these reports before presenting the final document 60 days after these proposals are submitted. Once again Article 37 stipulates that the Parties involved can agree to extend the deadline of the final report. If the panel concludes that there is a violation of labour legislation both members can attempt to meet and come up with an appropriate "action plan" outlined in Article 38. If no plan is forthcoming either Party can request that the panel be reconvened to consider further action. As with the NAAEC the panel can decide to approve or recommend an alternative plan or levy fines against the guilty Party. The NAALC also punishes governments as opposed to specific businesses which once again raises questions about the deterrent effect of these fines. One significant difference between the two agreements, however, is the fact that these fines are paid into a Labour Commission fund designed to improve labour law enforcement in the country complained against. At the same time it is also important to remember that "since these funds are spent at the direction of Council their allocation will be subject to the consensus rule, giving the country complained against an effective veto over how they would be used."[50]

Perhaps not surprisingly the NAAEC and the NAALC have very similar limitations. The NAALC limits the scope of what the ECEs can actually review, it dictates a lengthy

and cumbersome process for convening arbitration panels, there are considerable loopholes, and the Council can stop the dispute procedure at a number of different stages. Canada is also limited by Annex 46 which outlines the significance of provincial jurisdiction in the area of labour legislation. Canada is not allowed to request an ECE or a dispute panel for the benefit of any province not declared by Ottawa to be bound to the agreement under the conditions outlined in Annex 46(1).[51] Annex 46(4) further limits Canada's ability to challenge labour violations by stipulating that Ottawa must verify that a matter is under federal jurisdiction if a province has not been declared to be part of the agreement. In addition, "the federal government and the provinces included in the declaration must account for at least 35 per cent of Canada's labour force for the most recent year in which data are available, and where the matter concerns a specific industry or sector at least 55 per cent of the workers concerned are employed in the provinces included in Canada's declaration under paragraph 1."[52] In the end it is clear that the NAALC lacks the enforcement capabilities that labour advocates had demanded. As with the NAAEC, however, it should be acknowledged that the labour accord does provide a starting point for future negotiations on North American labour issues.

The Side Deals and the Provinces

Although the NAAEC and the NAALC are not international trade obligations *per se* they do arguably represent one of the most direct links between economic regimes and provincial jurisdiction to date. As several provincial officials have noted *Labour Conventions* states very clearly that labour is a provincial responsibility with almost 93 per cent of existing legislation under the jurisdiction of the provinces. As such, "without direct provincial involvement Ottawa could only claim to bind 7 per cent of the Canadian workforce in any labour agreements with the United States or Mexico."[53] Although existing case law is not as definitive on environmental issues provincial representatives also suggest that Ottawa is unable to ignore the provinces when negotiating international agreements on the environment. As one official pointed out:

> Over the decades the courts have tended to address environmental issues from the perspective of whether they dealt with matters clearly of a local nature or whether there were public works or undertakings or whether it was considered to be a resource management issue or whether it involved certain types of water control that was under federal jurisdiction. As such, there tended to be no clear delineation of who could claim full responsibility for environmental protection which has resulted in the tendency of both levels of government to work cooperatively in matters of environmental protection. Therefore, [in terms of the side deals] the provinces made it clear that they would only be bound by these agreements to the extent they would allow themselves to be bound.[54]

Even federal officials, who often play down the significance of the side deals concede that "the provinces carry a big stick on labour and the environment and the turf situation is pretty clear."[55]

The time and space devoted to provincial compliance in the side deals is also a clear indication of the importance of the provinces. Ottawa's reluctant acknowledgment of provincial significance in terms of the environment and labour accords is also an important development in a policy area where the federal government has traditionally declared its paramountcy. As one federal official noted:

> the involvement of the provinces in the side deals was simply a political necessity. We needed provincial information and expertise and let's face it, it just makes sense to get as many people on board as early as possible when these agreements touch on so many areas of domestic legislation. It helps limit problems down the road and it doesn't do us much good to negotiate an agreement where we have no hope of gaining provincial compliance. It would be nice to have an institutional means to deal with the provinces but the fact that Canada has no real mechanism for regional representation... meant that we really had no choice but to include the provinces as much as possible.[56]

The apparent willingness of the federal government to include the provinces in the Side Deal negotiations was confirmed by provincial representatives. The provinces saw all of the Mexican and American position papers and were completely involved in the drafting of the Canadian proposals. The provinces were also invited to the final stages of the negotiations in Washington in August of 1993. Six provinces attended various stages of the discussions and Alberta and Quebec were present for all of the negotiations. Provincial representatives were involved in daily or twice daily meetings with federal officials to discuss the American and Mexican submissions. As one official noted, "we definitely had an impact on changes that were made to the text of the agreements. We made it very clear what was acceptable or desirable from a provincial perspective and these considerations were included in the Canadian proposals."[57] The same official suggested that the content of the final documents, in reference to Annex 41 of the NAAEC and Annex 46 of the NAALC, provide proof of the significant provincial impact in comparison to the American and Mexican states. "The Canadian provinces were only to be covered by these agreements upon notification by Canada to the United States and Mexico that specific provinces would be willing to take on these obligations. Canada made it clear that Ottawa would not take federal responsibility for provincial actions as the United States and Mexico did."[58]

Provincial involvement, however, was not limited to the Side Deal negotiations. In order to declare the participation of as many of the provinces as possible, as stipulated in the Annexes of both the NAAEC and the NAALC, Ottawa has entered into negotiations to

develop a compliance agreement between both levels of government. Ottawa's intention of seeking formalized linkages with the provinces was expressed in a speech by Tom Hockin, the then Canadian minister of international trade, following the formal announcement of the NAAEC and the NAALC. In recognizing the significant input of the provinces during the negotiations Hockin noted that both levels of government "now have the opportunity to become participants in the implementation of the two agreements. The next step is to develop formal understandings with the provinces wishing to take on the obligations and enjoy the benefits of the agreements."[59] In the words of another federal official "these efforts are precedent-setting. Trade, labour, and the environment are truly the wave of the future with these international agreements and formal domestic compliance mechanisms for the provinces will definitely be significant aspects of these negotiations."[60] In sum, these discussions "represent an opportunity for Ottawa to involve the provinces as much as possible and in doing so they establish a foundation for future partnerships."[61]

The provinces have also been supportive of Ottawa's attempts to negotiate federal-provincial compliance mechanisms for the side deals. In fact, provincial interest in these measures actually began before the completion of the NAAEC and NAALC negotiations. The provinces first submitted draft compliance proposals for both accords in the summer of 1993. These initial proposals were similar to traditional MOUs that Ottawa usually negotiated with the provinces when international agreements encroached on areas of domestic jurisdiction. During this period, however, the federal government was busy with the trilateral Side Deal negotiations and simply did not have time to consider the provincial proposals. As the negotiations neared completion, however, the provinces tabled two more drafts and by March of 1994 they had submitted a total of six proposals on the compliance mechanisms. A number of federal officials were of the opinion that the provinces had actually worked together on these efforts and divided different aspects of the accords amongst them.[62] Not surprisingly, by the time Ottawa developed its first draft text, which involved input from a number of federal departments, there were significant differences between the positions of both levels of government.

There is currently considerable uncertainty as to what the final compliance agreements may contain. Provincial draft proposals have suggested an arrangement where both Ottawa and the provinces would be "jointly responsible" for Canadian positions in the NAAEC and the NAALC. Consensus on these issues would be reached by a federal-provincial committee system which would give direction to Canada's officials in the labour and environment Commissions. Some provincial officials believe a final Side Deal consensus mechanism may ultimately be similar to the one employed at the GATT. Those provinces choosing to participate in the agreement would not vote on individual issues.

Instead, Canadian positions would be reached by a process where a certain number, or percentage, of participants would be required to reach a consensus.[63] Essentially the compliance agreements would set out in writing the rights and obligations of both levels of government and the representation the provinces would have on these institutional bodies. While Ottawa sometimes suggests otherwise, the provinces maintain that any negotiated agreement will serve as a precedent for provincial involvement in other trade related arrangements in the future. Specifically, these formalized linkages will develop a new role for sub-national governments in the formulation of Canadian foreign economic policy. Previous "consultation" in existing trade related committees will give way to "participation" where Ottawa is obliged to accommodate provincial concerns or else run the risk of being unable to negotiate subsequent domestic compliance agreements. As one provincial official made clear, "the provinces may be willing to accept 'consultation' in issue areas clearly under federal jurisdiction but for everything else we will be seeking full provincial 'participation' or involvement. We are definitely trying to get Ottawa to change its belief that provincial 'consultation' is their only obligation."[64]

It is at this point where federal officials begin to downplay the significance of both the side deals and the compliance negotiations. The same individuals who characterized developments related to the NAAEC and the NAALC as meaningful precedents for federal-provincial relations were much more cautious when pressed on the issue of provincial empowerment. These officials suggested that the side deals and the compliance negotiations were really not that important as they simply enforced existing domestic legislation as opposed to developing new rules-based international trade linkages. The fact that the NAAEC and the NAALC existed primarily as a result of American concerns over Mexican labour and environmental standards, as opposed to Canadian practices, were also noted by representatives attempting to minimize the importance of the agreements. According to a senior federal official:

> regardless of what the provinces may say these negotiations are "political" and not "constitutional." Provincial participation and access is a "political" courtesy and an attempt to expand cooperative federalism. The problem is that the provinces have raised their expectations and now view this access as a right and not a courtesy. We understand that as more areas of provincial jurisdiction become part of these commitments it makes "political" sense to develop an environment of provincial participation but this is linked solely to maintaining Canadian legitimacy in the international system. Let's face it, the side deals are just not that significant. They are simply a political exercise for the United States designed to change a Bush agreement to a Clinton agreement. The bottom line is that these improved linkages are a "political" necessity as opposed to a "constitutional" reality.[65]

Are these comments a result of political "posturing" by federal officials? Perhaps, but it is difficult to reconcile these conclusions with earlier statements made by the same representatives. What then is at the root of these contradictions? Is it a realization of the impact of globalization and the changing focus of international economic regimes or are the actors involved focusing exclusively on the "political" considerations of federal-provincial relations? The federal government's "schizophrenic" position on the importance of the Side Deal compliance agreements suggests that Ottawa is being influenced by both globalization and the "constitutional" and "political" considerations of Canadian federalism. Federal officials, responding to pressures from international economic regimes, do not have a formal obligation to include the provinces, but recognize the significant political costs associated with excluding these actors. Therefore, as with the NAFTA committee system on international trade, Ottawa is forced to concede some provincial involvement under the already well established system of executive federalism. With the Side Deal compliance mechanisms, however, the federal government is less willing to promote provincial empowerment given the potential for future demands regarding participation in international trade negotiations. It can be argued that the establishment of precedent setting compliance mechanisms for the side deals has considerable constitutional significance, especially in terms of legitimizing provincial involvement and forcing Ottawa to enter into binding compliance agreements with the provinces. All of these developments further restrict the autonomy of the federal government in the formulation of foreign economic policy. Taken in this light, Ottawa's "confusion" over the significance of the side deals is not surprising. These statements are a direct result of the federal government's pre-occupation with the "wins" and "losses" of Canadian federalism. From this perspective, globalization has not only increased the agenda of intergovernmental relations. It also has the potential to change the nature of federal-provincial struggles over the division of powers in Canada.

Provincial positions on the NAAEC and the NAALC in particular, and the NAFTA in general, also suggest that the provinces are primarily pre-occupied with the "political" and "constitutional" costs associated with Canadian federalism. To date, no consensus has been reached on the content of the compliance agreements and several of the smaller provinces, concerned that any increase in provincial power may further marginalize their interests, have questioned the need for a more formalized relationship with the federal government. Other provinces, due to sectoral pressures and bureaucratic infighting, have been unable to develop any coherent strategies for either the NAFTA or the side deals. The reality is that sub-national governments in Canada have only a limited amount of experience and resources in this area of economic policy. As a result, while officials continue to stress the importance of globalization, provincial policy considerations, even more so than at the

federal level, are dominated by the largely political aspects of Canadian federalism. This focus not only limits the potential gains for the provinces, both in terms of international economic linkages and the division of powers within Canada, but it also makes it much easier for Ottawa to co-opt independent provincial initiatives under the framework of the Canadian state.

Having said that, however, it is important to note that both levels of government have completed negotiations on an agreement designed to transfer significant power to the provinces on environmental issues. Although these discussions were not directly related to the Side Deal compliance mechanisms they may offer a blueprint for similar provisions for the NAAEC and the NAALC. One of the key aspects of the new arrangement, formally known as the Environmental Management Framework Agreement (EMFA), is its reliance on a mutually agreed upon power-sharing arrangement, as opposed to a formal constitutional amendment, between Ottawa and the provinces regarding environmental standards in Canada. According to Steven Kennett, a research associate at the Canadian Institute of Resources Law, the EMFA provides "a sophisticated example of what may be the new model for reforming Canadian federalism."[66] Specifically, the comprehensive plan recognizes federal authority in areas dealing with national and international environmental standards, in matters dealing with Crown lands and aboriginal peoples, and in working with the provinces to maintain nationally important ecosystems. The provinces, on the other hand, are responsible for the development, implementation, and management of these environmental regulations. Traditionally, the administration of environmental protection was divided by issue areas such as air, soil, water, and wastes. In developing the new framework, however, federal and provincial officials examined which levels of government were best suited to fulfill the various functions and then organized jurisdictional issues accordingly. Essentially, the agreement puts the "federal government out of the environmental-protection business, restricting its compliance monitoring, enforcement, and emergency responses to federal lands and at international borders."[67] In doing so, the EMFA further limits the autonomy of the federal government in the environmental sector. At the same time, however, the fact that the provinces are now the new gatekeepers for these issues suggests that their capacity to act will also be limited as domestic sectoral interests, both from business and environmental groups mobilize to protect their interests.

Conclusion

The NAFTA side deals on labour and the environment offer a good indication of the future direction of international trade agreements. As economic regimes become more intrusive

they will continue to include areas of domestic jurisdiction not traditionally associated with previous negotiations. The NAAEC and NAALC are significant in that they are the first agreements designed to ensure the enforcement of domestic labour and environmental standards in North America. At the same time, however, it is important to recognize the limitations of both agreements. The commissions set up to monitor and enforce the side deals are open to political manipulation, the dispute settlement mechanisms are slow and cumbersome, and there are several provisions that allow member states to extend, or terminate, ongoing investigations. The agreements also fail to establish new minimal standards and governments are forced to identify "persistent patterns of failure" that make it extremely difficult for Canada, the United States, and/or Mexico to resolve disputes under the NAAEC or NAALC. While labour and environmental concerns are not excluded from the original NAFTA text, it is unclear if the side deals offer a marked improvement over existing domestic legislation on these issues.

The NAAEC and NAALC have not significantly altered labour and environmental practices, but they have added a new dimension to federal-provincial relations in Canada. The importance of the provinces in the NAFTA side deals is evident in the time and space given to provincial governments in both agreements. Obviously, this results from the fact that the NAAEC and the NAALC deal almost exclusively with areas of provincial jurisdiction. There are also other indications that suggest the provinces are becoming more important actors in the policy process. Ottawa made no secret of the fact that it relied on provincial expertise during the Side Deal negotiations and federal officials acknowledge it will be impossible to exclude the provinces from similar jurisdictional areas in the future. Several provinces have also made it clear that they view the federal-provincial compliance mechanisms for the NAAEC and the NAALC as important precedents guaranteeing direct provincial participation in the negotiation of future international trade agreements. If and when successfully completed these compliance mechanisms may have a long-term constitutional impact that is more significant than the developing federal-provincial committee system on international trade.

The question now is whether Ottawa and/or the provinces are ready to make further changes to accommodate the significance of these international and domestic developments. The EMFA represents an important step forward, but there is evidence to suggest that both levels of government remain hesitant to make any long-term commitments in terms of formalizing federal-provincial linkages on matters of international trade. Federal comments regarding the "political courtesy" of provincial consultation suggest that Ottawa remains reluctant to recognize the constitutional legitimacy of these arrangements now or at any time in the near future. The fact that federal economic initiatives tend to be formulated on an ad

hoc basis also suggests that while Ottawa may be well aware of the long-term implications of international regimes and provincial empowerment, it lacks the resources and/or political will to integrate the provinces fully into the policy process. The federal government is not, however, the only domestic actor that has difficulty responding to pressures from intrusive international economic regimes. The provinces are also guilty of concentrating on the daily political battles associated with Canadian federalism and are often unable to respond appropriately given their limited resources. As the next chapter suggests, most provinces have failed to develop a long-term vision in terms of foreign economic policy, thereby further limiting opportunities to address potential future challenges to provincial autonomy.

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55. Personal interview with confidential source, February 11, 1994. There is some evidence to suggest, however, that environmental issues do not fall primarily under provincial jurisdiction. Critics point to the Environmental Assessment Act (EAA), passed in January of 1995, as an indication of strong federal control in matters of the environment. The law gives Ottawa the power to review the environmental impact of projects such as pulp mills, dams, and mines, that receive federal funding or require federal licenses. Environmental groups, however, have been highly critical of Ottawa's unwillingness to monitor provincial projects to date. In fact, they suggest that the law has become irrelevant given the federal government's willingness to devolve powers to the provinces in the aftermath of the recent Quebec referendum. There is also concern at the federal level regarding the economic costs of conducting environmental reviews. One proposal has recommended that the companies finance these assessments but this has also been met with criticism from a number of environmental agencies. Regardless, the federal government's lack of political will to enforce the EAA is not a good measure of whether or not Ottawa has the jurisdictional authority to act on environmental issues. If anything, the Act suggests that the "turf" situation may be less clear than some federal officials believe. At the same time, however, the lack of federal action to date suggests that provincial autonomy may also be increasing on matters of the environment. This conclusion would also appear to be reinforced by the introduction of the Environmental Management Framework Agreement which will be discussed in greater detail at the end of the chapter. For more information on the EAA, please see Anne McIlroy, "Environmentalists Fear Erosion of Law: Provinces Seek to Control Reviews," *Globe and Mail* July 15, 1995, p. A-1.
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66. Robert Matas, "Environment Pact Transfers Powers to Provinces: Agreement Could Become Blueprint for Reforming Structure of Federalism," *Globe and Mail* January 20, 1996, p. A-7. For more information on the EMFA, and its relation to the Environmental Assessment Act, please see note 55.
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CHAPTER 7

The NAFTA and the Provinces
- Theoretical Challenges and Missed Opportunities -

Introduction

While the increasing intrusiveness of international trade regimes has contributed to an expanded role for the provinces in the formulation of Canadian foreign economic policy, there is also evidence to suggest that a number of non-territorial identities are becoming increasingly more relevant in terms of contemporary federal-provincial relations. Decentralization is no longer simply about governments. As regimes continue to focus on areas of domestic jurisdiction it is inevitable that non-territorial interests will be included in future international negotiations and agreements. Given the electorate's negative response to the Meech Lake and Charlottetown Accords there is no reason to believe that societal groups will not mobilize to protect their interests, thereby further limiting the autonomy of both Ottawa and the provinces. If these conclusions are accurate, it follows that both levels of government should have an increasing interest in the significance of international and domestic developments related to foreign economic policy. In terms of the NAFTA and the Side Deals, however, the provinces have failed to develop any long term strategies to deal with the potential impact of intrusive interdependence on provincial autonomy. As the following chapter suggests, the four major provinces, Alberta, Quebec, British Columbia, and Ontario, all suffer from a number of internal pressures, such as limited bureaucratic

resources, challenges from sectoral interests, and political and/or partisan considerations, that interfere with their ability to assess the importance of these developments. Unlike the other provinces, however, Alberta and Quebec, have expressed greater concern regarding the future implications of intrusive interdependence, especially in terms of the process of formulating policy in this area. This is not to say that the other provinces, namely British Columbia and Ontario, have failed to acknowledge the relevance of these issues. It simply suggests that they continue to pursue what is primarily an ad hoc approach to policy due largely to the domestic factors listed above. As previously noted, growing restrictions on provincial autonomy, in addition to those at the federal level, also raise a number of theoretical questions regarding the literature on Canada's external relations, Canadian federalism, and international political economy. In order to address these concerns intrusive interdependence is once again introduced as an alternative framework for better understanding the current and potential future reality of Canadian foreign economic policy.

Intrusive Interdependence and the Provinces

In the post-war period intrusive international economic regimes have had a profound impact on the agenda of contemporary Canadian federalism. While federal-provincial relations continue to take the form of traditional jurisdictional conflicts these debates are no longer simply dominated by domestic issues. As this study has argued the increased significance of the committee system on international trade and the domestic compliance mechanisms for the NAFTA side deals are all linked to the evolution of intrusive interdependence. These international developments have manifested themselves along traditional economic regional and/or provincial lines. Historically, due to the absence of a centralized institution in which to deal with societal and economic pressures, the provinces have served as the main articulators of these interests. As international variables have influenced the domestic agenda of Canadian federalism both levels of government have reacted in typical fashion. The provinces view the intrusiveness of these regimes as an opportunity to gain more power from the federal government and Ottawa has attempted to co-opt the provinces under the guise of executive federalism. Therefore, on the surface, the main impact of these international developments would appear to be a reinforcement of pre-existing regional identities and traditional struggles over provincial involvement in the federal policy process.

These conclusions raise an obvious question. How is this different than the reality of intergovernmental relations in Canada during the last 100 years? It is, after all, a discussion about centralization and decentralization and which level of government controls the policy process. The key, however, is to examine closely the relationship between intrusive interdependence and Canadian federalism. After all, it is difficult, if not

impossible, to come to any definitive conclusions regarding this relationship through an analysis of domestic variables alone. Regionalism is a reality in Canada and the lack of an effective brokerage mechanism is such that "province-building" has become a historically predominant aspect of Canadian politics. Therefore, the only way to determine the real impact of economic regimes is by looking at the issue of autonomy at both the federal and provincial level. In doing so it is possible not only to understand the current status of federal-provincial relations in terms of globalization but to better evaluate the long-term influence of these developments on Canadian federalism.

As already noted, there is considerable evidence to suggest that Ottawa has come under increasing pressure from both economic regimes and provincial governments in the formulation of foreign economic policy. This point has been reiterated ad nauseam and does not need to be explored again. The direct relationship between the provinces and international regimes, however, has not been examined in great detail. Therefore, to understand better the impact of intrusive interdependence the issue of provincial autonomy must be examined in both a domestic and international context. Currently, it would appear that any increase in provincial autonomy is limited to the domestic level. There is, for example, no evidence to suggest that the provinces have become important international actors. In fact, most provincial offices that did exist abroad have been closed and even the largest provinces do not have the economic resources to establish a significant presence in the international community. While it is true that the provinces may become more important in future international negotiations at this stage they continue to pursue external goals largely through the federal government. The provinces appear to understand that their best hope for international influence remains at the domestic level.

At the same time the provinces appear unaware of, or unwilling to consider, the potential long-term impact of intrusive interdependence on provincial autonomy. While it has enhanced the role of the provinces in the short term, it is unlikely this trend will continue. As these regimes become more intrusive it is inevitable that more areas of provincial jurisdiction will be added to these agreements. As a result, the provinces will eventually suffer the same fate as the federal government in terms of its relationship with these regimes. In the end provincial autonomy will be limited as sub-national governments become subject to further international restrictions. Therefore, it is arguable that current developments in Canadian federalism are indicative of challenges facing most states in the international system. As the complexity of the system evolves states are increasingly more willing to give up autonomy to international regimes to maintain some control over globalization. In federal states such as Canada this loss of autonomy has created new influence for the provinces in the formulation of Canadian foreign economic policy. As the

intrusiveness of these regimes increase, however, the provinces will also become increasingly tied to international rules-based agreements.

This does not mean that domestic politics will become irrelevant. In fact, the linkage between international and domestic levels of analysis is central to this thesis. Traditionally, Canadian federalism has been about governments. Therefore, the provinces have historically been viewed as the legitimate articulators of social and economic interests in Canada. Recently, however, it has become clear that not all domestic interests acknowledge the legitimacy of regional conceptions of identity. As Alan Cairns has suggested, the inclusion of the liberal rights-based Charter of Rights and Freedoms in the Constitution Act, 1982, empowered a number of segments of Canadian society previously marginalized in federal-provincial relations. As Cairns puts it, the Charter speaks past governments and directly to Canadians, especially non-regional groups such as aboriginal peoples, women, and the disabled. For many of these groups the "language of federalism, of territorial particularisms, is largely irrelevant." Instead these non-territorial cleavages "think of themselves in national terms, and accordingly are somewhat distrustful of provincial governments."[1] Many of these newly empowered societal groups fail to acknowledge the legitimacy of provincial governments as representatives for their interests.

While it can be argued that these developments have little to do with international trade they do have a direct impact on federal and provincial autonomy. This was clearly evident with the Meech Lake Accord. The Accord was designed to address the specific concerns of Quebec following its exclusion from the patriation of the Constitution Act, 1982. As such, Meech Lake focused on the historic concepts of dualism and recognition of Canada as a country based on two founding nations. It acknowledged Quebec as a distinct society and included other clauses dealing with immigration, the federal spending power, and the appointment of Supreme Court justices and Senators, that apparently transferred more power to the provinces. Absent from the agreement was any mention of individual rights or non-territorial interests. Therefore, in the eyes of women, aboriginal peoples and the disabled, to name but a few, the Meech Lake Accord entrenched regional conceptions of identity and marked a step backward from the gains made with the Charter in 1982. Meech Lake re-affirmed that Canadian federalism was about governments thereby relegating all other interested parties to the sidelines. In the words of Cairns many of these groups felt like "their ox had been gored."[2]

The tension between territorial and non-territorial dimensions of Canadian federalism were central to the period of constitutional negotiations that followed the demise of Meech Lake. Those groups excluded from the Accord were highly critical of the elite nature of the negotiations and pressured Ottawa to open up the next round of constitutional

talks. To see the political relevance of these societal variables one only has to look at the content of the subsequent Charlottetown Accord. Charlottetown represented a mixed "grab-bag" of interests that attempted to appease the groups that were alienated during the Meech Lake negotiations. The federal government also implemented wide ranging consultative mechanisms designed to allow access to the process for all Canadians. While television coverage of the Spicer and Beaudoin-Dobbie Commissions often showed somewhat perplexed committee members sitting in empty gymnasiums in northern Saskatchewan they still provided forums in which non-territorial cleavages could advance their demands for greater constitutional recognition. The Charlottetown Accord was defeated in a national referendum on October 26, 1992, but its legacy, along with the Charter, is such that Canadian federalism is no longer about governments. As Richard Simeon and Ian Robinson suggest, there is now "a fundamental disjunction between the society constitutionalized in the federal state, which represents and privileges territorial interests and identities, and an emerging society in which territory may be far less salient."[3]

How are these conclusions related to Canadian federalism and international trade? The mobilization of non-territorial cleavages and their ability to influence the domestic policy agenda place further limitations on federal and provincial autonomy. In addition to the restrictions imposed by international economic regimes state autonomy is also limited by increasing demands from societal actors. In Canada, these groups challenge the traditional dominance of regional-based identities in Canadian federalism and place further limitations on both the provinces and the federal government. As the Meech Lake and Charlottetown Accords suggest these groups can mobilize and influence the policy agenda when they perceive their interests are threatened. Therefore, if the intrusiveness of international economic regimes continues, and in doing so affects these non-regional interests, it is unlikely that they will stand by and allow these interests to be negotiated by federal and/or provincial officials that have, in their eyes, betrayed their interests in the past.

If this is the case, it would appear that Canadian federalism will no longer be simply about the centralization and decentralization of governments. As intrusive interdependence evolves decentralization will become increasingly linked to pressures from non-territorial cleavages. These developments are already evident in terms of federal-provincial relations and the formulation of Canadian economic policy. Pressure from environmental groups forced the B.C. government to reconsider the Kemano Completion Project and public and corporate condemnation from the western provinces contributed to the termination of the NEP. There are also provisions in the new environmental and labour side deals of the NAFTA that allow the private sector, non-governmental organizations, and individuals to

submit complaints regarding violations of the NAAEC and/or the NAALC. Even the process of executive federalism has broadened its policy communities to incorporate societal interests in matters of international trade. As Kathy Brock has pointed out:

> the federal-provincial negotiations on external and internal trade have been the subject of scrutiny by such groups as the Coalition of Concerned Canadians, business groups, and social policy advocates. [Even] recent intergovernmental negotiations on the reduction and elimination of interprovincial trade barriers involved a series of meetings with citizens in each jurisdiction conducted by such organizations as the Canada West Foundation.[4]

At first glance, although the intrusiveness of economic regimes appears to enhance regionalism, as the provinces to date have become important actors in this policy area, but future challenges to federal and provincial autonomy will be linked to international developments and their effect on domestic sectoral interests.[5] Provincial autonomy may be enhanced in the short term, but there is increasing evidence to suggest that decentralization may be symptomatic of other aterritorial pressures. Ultimately, as intrusive interdependence evolves, and the already blurred line between international and domestic levels of analysis continues to fade, the "state" as we currently understand it may become increasingly less relevant in terms of understanding the interaction of actors in the global political economy.

If this is an accurate depiction one would expect the evolution of intrusive interdependence to be of significant concern to both Ottawa and the provinces. At the very least one would assume that both levels of government would have some kind of long-term political and/or economic strategy to deal with the potential benefits and/or problems related to globalization. To date, however, both Ottawa and the provinces continue to approach economic policy on what is essentially an ad hoc basis. As one federal official suggested "we [the federal government] would like to be able to implement a long-term strategy in terms of economic policy, and we do have plans based on long range projections but domestic concerns and the volatility of the international economic system means that these are often useless in the day to day functioning of government."[6] Both Ottawa and the provinces continue to focus on the daily "wins and losses" of Canadian federalism as opposed to international and domestic matters that may lead to constitutional change or significantly influence state autonomy. As the following discussion will make clear, the provinces, for varying reasons, have often failed to consider the long-term implications of the North American Free Trade Agreement and the side deals.

Alberta and Quebec - Champions of Provincial Rights?

Two provinces that have expressed some concern over the potential ramifications of the NAFTA are Alberta and Quebec. In Alberta, support for the NAFTA and the side deals was always extremely strong and while the provincial government continued to covet the Asian-Pacific market, it did not view the agreement as a threat to these objectives. Alberta's main areas of interest were in the energy sector. Most of these issues were addressed to the satisfaction of the provincial government. This does not mean that Alberta was not an active participant in the NAFTA, the NAAEC and the NAALC negotiations. In fact, despite its support for the agreement, Alberta continually expressed significant concern over the need for ongoing consultative linkages between both levels of government. As one official noted "Alberta staked out a position on these issues very early in the process and made it clear to Ottawa that serious consultation was needed with the provinces as most of these issues were in areas of provincial jurisdiction."[7] Alberta also stipulated that it would not be involved in any aspect of the NAAEC and the NAALC unless domestic implementing agreements were negotiated and there was some effort to include the provinces in the dispute settlement process. At this stage it is difficult to determine whether or not provincial demands will be included in the domestic compliance arrangements. The federal-provincial power sharing arrangement developed for the Environmental Management Framework Agreement (EMFA) suggests that these concerns will be met in some capacity. In terms of other aspects of the NAFTA and the side deals, Alberta appears to be relatively pleased with the process. While Alberta wanted an exclusion of the environmental law definition from the NAAEC, provincial officials, to this point, are satisfied with federal efforts to share information and include the provinces in the negotiations. At the same time, however, Alberta has made it clear that this cordial environment could change if Ottawa stops bargaining in good faith. "The current domestic Side Deal negotiations are the wave of the future for Canadian international trade agreements. If Ottawa wants to guarantee compliance they have no choice but to ensure some mechanism for future provincial participation."[8]

These comments suggest that while Alberta was in general agreement with the substance of the NAFTA negotiations, the province continues to have a number of ongoing concerns regarding the need for meaningful consultative linkages between both levels of government. This should not be interpreted as a lack of commitment from Alberta in regards to Canada's international obligations in trade regimes such as the NAFTA. It suggests that, despite suffering from a lack of bureaucratic resources (one individual is essentially responsible for coordinating all of the province's NAFTA commitments), and a

high number of partisan political battles associated with the populist Conservative government of Ralph Klein, Alberta has still managed to place a great deal of emphasis on these linkages and continues to push for greater provincial involvement. In fact, Alberta has been one of the leading provinces promoting provincial participation, as opposed to consultation, at future international trade negotiations. Despite its limited resources Alberta has also made a point of getting involved in as many NAFTA related issue areas as possible. Obviously, there are sectoral economic and political concerns that contribute to this activity. For the most part, however, Alberta is regarded as a highly professional, if somewhat intense, participant in the domestic policy process. As one observer suggested, "if you are prepared and know what you're talking about Alberta can be an extremely productive province to do business with. It's only when you come to the table without doing your homework that you are often quickly dismissed as an irrelevant part of the proceedings."[9] Obviously, these characteristics make Alberta a strong advocate for a greater role for the provinces in the formulation of foreign economic policy in the future.

Quebec was also strongly in support of the NAFTA, the NAAEC and NAALC. In terms of activity in the international system Quebec has a historical legacy that no province can match. In the past, Quebec's international initiatives, which have included state visits to France, participation in La Francophonie, and other politically motivated activities, were controversial and viewed as a threat by the rest of Canada. Quebec's outward focus, however, has also included economic issues and in that regard the NAFTA and the side deals were a logical extension of that activity. Quebec had several objectives going into the NAFTA negotiations. First and foremost they wanted to maintain the gains made under the FTA and exclude issue areas, such as publishing and language rights, that were considered vital to the preservation of Quebec's distinct culture. The provincial government was also interested in opening the Mexican market to Quebec goods and ensuring that Quebec remained an attractive location for investment. In Quebec's opinion the NAFTA and the side deals did not stand in the way of any of these objectives.

Quebec's support for the NAFTA, however, was also linked to its role in the previous FTA negotiations. Most observers felt Quebec would be opposed to any free trade initiative as its provincial industrial base consisted of a number of non-competitive, subsidized industries. After consulting with the private sector and initiating a number of studies, however, the Liberal government of Robert Bourassa came to the conclusion that the FTA provided a means to transform Quebec's industrial base and improve the provinces international competitiveness. In addition to these sectoral considerations Bourassa was also motivated to support the FTA due to Ontario's decision to reject Canadian participation. Quebec saw an opportunity to step into the vacuum of power in the federal-

provincial relationship that was created by the opposition of David Peterson's Liberals. "In many respects, on free trade Quebec assumed the leadership role... that Ontario played traditionally on national issues, speaking for the provinces on matters of general concern while searching for enough common ground with the federal government to preserve forward movement."[10] In March of 1986 Peterson approached Bourassa about the possibility of a united offensive on free trade. Quebec declined the proposal, however, "replying that its alliances would depend on the issues at hand, and Quebec's interests on them."[11] The result was a loss of stature and power for Ontario in federal-provincial trade relations that would continue to influence future international economic initiatives.

Quebec's role as a federal-provincial "facilitator" continued during the NAFTA negotiations. Quebec made it clear it would vigorously protect its interests in the negotiations. Yet the province also fully supported Ottawa's attempts to complete a trilateral trade agreement. In terms of issues falling under provincial jurisdiction Quebec stated very early in the negotiations that any agreement could not be implemented without legislative intervention, and if need be, executive intervention, by those provinces directly affected. Despite its earlier support for the FTA, Quebec also noted that it opposed Ottawa's previous decision to keep the right to implement provisions under provincial jurisdiction when the provinces failed to do so. At the same time any negative comments by Quebec were tempered by cautious support. There was little doubt that Quebec wanted to see the successful negotiation of the NAFTA. Free trade, after all, was a key aspect of the province's restructuring plans. In the words of John Ciaccia, Quebec's Minister of International Affairs, "Quebec's participation in defining the Canadian position under the North American Free Trade negotiations illustrates a commitment to developing a dynamic economy that can adapt to the new international environment."[12] Quebec's support was also linked to its role in the evolving federal-provincial trade relationship. Not only had Quebec improved its profile with Ottawa in terms of the NAFTA but other provinces now perceived Quebec as a leader of provincial rights in relation to the NAAEC and the NAALC. As one provincial official from outside Quebec noted, "Quebec is the key. How they react to federal proposals on the [Side Deal] compliance issue will likely determine the tone of federal-provincial relations in this area for years to come. They are the province that continues to gain control and influence in key international policy areas and if they back out of the side deals others will likely follow."[13] This may sound ironic given the current separatist rumblings coming from Quebec, but the province is a key player in emerging federal-provincial relations related to international foreign economic policy. It is also a role the province appeared to enjoy, especially in light of the diminishing significance of Ontario.

British Columbia - The Pacific Rim and the Influence of Labour

British Columbia is an example of how provincial policy can become "distracted" by a number of domestic variables, including limited resources, demands from various sectoral interests, and partisan political concerns. As with the FTA, British Columbia was a reluctant supporter of continental free trade. When the NAFTA was first announced B.C. cautioned that the agreement created a "fortress U.S." approach to economic policy that was damaging to overall Canadian interests. Most of the province's early opposition to the NAFTA was linked to the fact that British Columbia had a different economic focus than the majority of other provincial governments. Geographically, B.C. enjoyed easy access to the thriving Asia-Pacific market and the province had developed strong economic ties with a number of states in the region. The province's softwood lumber industry had also been the focus of a number of American trade complaints for over forty years.[14] As a result, British Columbia was the least dependent province in terms of trade with the United States. The ambivalence of the province was further heightened by its "position" in the federal-provincial relationship. Although B.C. was once a leader in the promotion of provincial rights it no longer plays that role. The economic reality for British Columbia is that there is no longer enough money to pursue these initiatives. As one provincial official noted, "the costs involved for B.C. international trade representatives are enormous. In terms of the NAFTA and the side deals we just can't afford to jump on a plane twice a month to fly to Ottawa or Washington to attend a meeting or a conference. We're not saying that these linkages are not important. We just want to be able to balance our costs with our other major trading partners in the Pacific."[15]

Another factor contributing to B.C.'s position on the NAFTA and the labour and environment accords was the province's attitude on the developing "trade game" of federal-provincial relations. Some departments were already heavily involved in conflicts with the federal government (namely Tax and Finance) and provincial trade officials made it clear that they were not interested in getting "bogged down" in petty federal-provincial disputes over economic turf. Ironically, provincial representatives acknowledged that, due to geography and its focus on the Pacific Rim, B.C. actually felt an affinity with Quebec, based largely on similar attitudes toward the federal government. For a number of reasons the province felt largely detached from the evolving federal-provincial relationship on international trade. According to one official:

> B.C, has a great deal of respect for Quebec's professionalism in the trade policy area. We even hope Quebec can cover "some of the gaps" in these deals that our limited resources do not allow us to spend a great deal of time on. The reality is

> that Quebec has great connections in Ottawa and we don't. There is a considerable regional bias in Ottawa that makes it even more difficult for B.C. to pursue an active role in the process. Even if we wanted to promote provincial rights in the trade policy area we are lacking the linkages to have any real impact. The simple fact is that few people from British Columbia want to work in Ottawa and those that do rarely want to stay. All of this makes it extremely difficult to establish any sort of network on trade policy issues.[16]

At the same time Victoria has also served notice that it will work hard to protect areas of specific interest to the province. For example, British Columbia was successful in excluding log export controls in the original NAFTA text. The provincial government also wanted to exclude a definition of "environmental law" under the NAAEC as it might provide another avenue for the Americans to challenge the provinces sectoral reliance on softwood lumber. Although "environmental law" was part of the final text of the NAAEC there is considerable evidence to suggest, as outlined earlier, that the addition of the definition may not be that significant.

The election of Mike Harcourt and the New Democratic Party (NDP) in British Columbia, after years of Social Credit domination, also made it difficult for provincial trade policy officials to have a significant impact on Ottawa in terms of the NAFTA. According to one official, "British Columbia would like to develop some kind of a long-term economic trade strategy but the current political reality is such that the NDP have minimal experience and/or interest in this area."[17] The same representative noted that "the NDP came to power at the end of the NAFTA negotiations and are still trying to find their way in terms of international trade."[18] A long absence from provincial power has also meant that the NDP has been influenced by a number of sectoral groups seeking rewards for long time support. This is especially the case with the powerful B.C. labour lobby. The NAFTA has provided a difficult task for the NDP, given labour's opposition to the agreement, and has contributed to the province's somewhat ambivalent support of the original text and the side deals. At one stage during the negotiation of the NAFTA the NDP government decided, albeit ultimately temporarily, to urge Canada to pull out of the negotiations. Cheered on by trade unionists at a conference on labour and the global economy in June of 1992, B.C.'s Trade Minister, David Zirnhelt, announced that the province would continue to attend federal-provincial briefings on the negotiations but would no longer "actively" participate in the meetings. Following the announcement Zirnhelt was immediately praised by Ken Georgetti, the leader of the B.C. Federation of Labour. Georgetti said that Zirnhelt had finally "put Ottawa on notice that working people's rights to fair wages, a decent standard of living and adequate health and safety protection must be included."[19] As one observer noted at the time, the "B.C. government's statement on the North American free

trade talks is strategically and tactically so foolish that one looks for political reasons for it."[20] It was implied that the timing and location of the announcement was a non-subtle reminder of the debts owed by the NDP to labour in the province. "This government clearly likes to throw major crumbs to its key block of supporters whenever they get together in large numbers" the commentator suggested. "Given organized labour's hostility to the existing free trade agreement between Canada and the U.S., and its fears about job losses stemming from an agreement that includes low wage Mexicans, how better to keep labour happy than by taking a tough, if illogical stand, on the current negotiations."[21]

The influence of labour in British Columbia did not diminish in the latter stages of the Harcourt government. As one exasperated official noted in February 1994, the government in the previous five months had responded to low public opinion polls by "parachuting" a number of advisors into several key departments. "This in itself is nothing that significant", the official suggested, "political appointments are often made early in the term of a new government. The major difference here is that most officials are appointed to line positions with clear responsibilities."[22] These new advisors, however, "are all former labour people with the authority to 'float' from department to department and issue area to issue area with no distinct mandate. Not only do they have a somewhat overwhelming ideological perspective but their addition has significantly slowed down the policy process."[23] While B.C. ultimately supported the NAFTA, largely because of the mixed message it would send to Asian investors, provincial officials are not certain this would have happened if these advisors had been in place during negotiations for the NAFTA and the labour and environment accords. Said one official, "I'm certain B.C. would have been even more opposed to the NAFTA and the side deals if these people were around in the beginning. ... The ironic thing is, however, that every study we did following the FTA showed there was little connection between free trade and provincial job loss."[24]

British Columbia's response to the NAFTA was dominated by a number of overriding political considerations that were not as apparent in Alberta and Quebec. B.C. would surely have liked to have had a more prominent role in supporting provincial rights but its geographic location, lack of resources, and focus on the Pacific Rim make this a lesser priority than in other provinces. The somewhat surprising affinity that provincial bureaucrats shared with Quebec also provides an indication of the feelings of exclusion that often exist in British Columbia. It is also clear that pressure from sectoral interests and other partisan political concerns further limit the capacity of the provincial government to actively pursue a more active role in the policy process. The NDP government's close ties to labour, and its lack of experience on matters of trade policy, all led to a number of contradictory statements by the province during the NAFTA negotiations. Coupled with

the uneasy alliance between the old Social Credit bureaucracy and the NDP's partisan political appointments it is perhaps not surprising that B.C. has become somewhat marginalized in federal-provincial discussions on matters of international trade. While B.C. has consistently taken a more direct approach in areas of critical importance to the province, such as softwood lumber, it would appear unlikely that British Columbia plans to become an advocate for expanded provincial participation any time soon. Having said that, however, it is clear that the province will act, often aggressively, if it feels specific sectoral interests are threatened by Canada's commitments to international trade regimes such as the NAFTA.

So What's The Deal With Ontario?

Despite the domestic challenges faced by British Columbia, nowhere are the NAFTA related "politics" of federal-provincial relations more evident than in Ontario. As already noted, Ontario's significance in federal-provincial trade relations began to diminish during the FTA negotiations. Peterson's decision to oppose the FTA was linked to his belief that Brian Mulroney's Conservative government was elected on a Western-Canada/Quebec strategy and Ontario was likely to be isolated on this issue anyway. Peterson's opposition was also hardened by Quebec's rejection of a proposed alliance on free trade and a federal decision on softwood lumber that led to the imposition of an export tax in 1986.[25] The more isolated Ontario perceived itself to be in the federal-provincial relationship the more partisan its anti-free trade message became. Not only did this damage Ontario's credibility with Ottawa and the other provinces, but it made little sense in terms of protecting and promoting provincial free trade concerns. While Ontario attended meetings and briefings on the FTA negotiations it refused to participate in any meaningful context. It was only at the very latest stages of the negotiations that Peterson recognized a deal was inevitable and Ontario began to scramble to protect its interests. Critics of the provincial position close to the process have noted that Ontario emerged from the negotiations knowing it had been outmaneuvered by the federal government. From their perspective, "the province had been cut out of the process deliberately by the Mulroney government, part of its Ontario-bashing strategy. The province's response to this perceived federal strategy erred badly, however, first in assuming Ontario could stop the negotiations, then in betting there would be no agreement and, most important, in deciding to play the role of a spoiler only, rather than attempting to shape the Canadian negotiating position."[26]

The stigma of the FTA fiasco carried over to the NAFTA negotiations. Instead of learning from its previous mistakes the Ontario government, now led by Bob Rae's New Democratic Party, fell into the same short-sighted political considerations that derailed

Peterson's Liberals. The actors may have been different at the provincial level but the conclusions were the same. Ontario aggressively challenged the NAFTA and made it clear that it would oppose both the original agreement and the subsequent side deals. Ontario outlined the NAFTA's perceived shortcomings in the *Final Report of the Cabinet Committee on the North American Free Trade Agreement* in June of 1993. The report was the result of several weeks of hearings in March and April and was presented to the public as a representation of the negative aspects of the NAFTA. The document concluded that "the federal government's approach [on the NAFTA] was totally unacceptable. The overwhelming majority of witnesses urged the government of Ontario to continue, indeed to intensify, its opposition to the federal government's actions with respect to the NAFTA."[27] The report also noted that the NAFTA's impact on energy policy, provincial jurisdiction, water and forest resources, social policy, and its effect on women were unacceptable. As a result, the Committee recommended that "the Government of Ontario assess the legal, legislative, and policy actions it can take to protect the interests of the people of the provinces in the face of the NAFTA."[28]

It was not long before Ontario announced its plans to challenge the NAFTA and the then proposed side deals. The details of Ontario's strategy were outlined in a speech by Frances Lankin, the province's Minister of Economic Development and Trade, on July 28, 1993. Lankin announced that Ontario would launch a five pronged attack on the agreement focusing on areas of provincial jurisdiction. In her speech, Lankin noted that work had begun on the following:

> We have retained counsel to develop a court challenge to the federal government's jurisdictional capacity to implement NAFTA and any related side agreements. We are contacting the other provinces with a view to working together on this and other issues; We are working on legislation to control water exports from the province to correct the weaknesses of the unproclaimed Water Transfer Control Act of 1988. This is to ensure Ontario's continuing control of these valuable natural resources, and in particular, its conservation and management; We are funding an independent research project on social dumping -- lowering production costs through inadequate labour and environmental protection. This project will examine the feasibility of a social dumping action under Canadian law; We are developing performance and domestic content requirements that could apply to firms seeking access to Ontario's green technology development programs...; [and] We are [also] examining the effects of the FTA and NAFTA on Ontario's energy security. In particular we are reviewing existing legislation to see whether we can make any changes that would enhance Ontario's energy security.[29]

In the news release immediately following Lankin's speech a considerable amount of background information was released by the Ontario government. In the area of water transfer legislation Ontario was primarily concerned that water resources were not

exempted from the agreement as unprocessed logs and fish were. There was concern that seven provincial drainage basins could be targeted for large scale water diversion projects. Ontario was in the process of drafting legislation to eliminate these possibilities. The energy proportionality provisions of the NAFTA, which guaranteed access to Canadian energy to United States consumers even in times of shortage were also a concern of the Ontario government. Provincial officials were worried that Canada would not be able to supply its energy market on priority basis in times of shortage. They planned to request a hearing of the National Energy Board (NEB) in addition to drafting legislation under the Ontario Power Corporation Act to limit the export of electricity. In terms of concerns over social dumping, Ontario was planning to support the formation of a producers group comprised of industry and labour to take a social dumping complaint to Revenue Canada and the Canadian International Trade Tribunal (CITT) to rule on whether or not Mexican policies constituted a subsidy. Ontario's efforts would mark the first time a trade action based on social dumping would have been presented in a Canadian court or before a domestic tribunal. Ontario's green technology concerns, on the other hand, were centered on NAFTA provisions that would limit the ability of governments to use certain types of performance requirements to promote economic development in Canada. Ontario planned to develop its green industry strategy by supporting provincial-based suppliers and ensuring that participating firms met a given level or percentage of domestic goods or services content. Finally, Ontario planned to challenge the constitutionality of the NAFTA using powers granted under the *Courts of Justice Act* allowing the government of Ontario to direct a reference to the Court of Appeal to obtain an opinion about any question, including those concerning the constitutionality of federal or provincial laws. As with the other plans, however, any significant details of the Ontario legal challenge were not released by the provincial government. Perhaps not surprisingly, none of these proposals became high profile issues in the weeks and months following Lankin's announcement. Considering the fact that the Rae government was subsequently defeated by the pro-free trade Conservative party of Mike Harris, these initiatives are no longer of any concern to the federal government.

How were these challenges linked to the NAAEC and the NAALC? In terms of content alone there was a significant relationship between the side deals and Ontario's proposed attack on the NAFTA. In referring to these agreements in her speech Lankin conceded that "the environment and labour side deals that are currently being negotiated, even if they are concluded successfully, will not address [the NAFTA's] fundamental problems."[30] In the case of the water and energy proposals, for example, there was no direct reference to the NAAEC and the NAALC, largely because they did not yet exist, but

the apparent content of these challenges was consistent with subsequent concerns expressed in these areas of the final agreements. Resource conservation and management were also an important aspect of the NAAEC but as critics have pointed out, it was unlikely that the text of this particular Side Deal would adequately relieve Ontario's concerns over water and energy. The same was also likely true for Ontario's proposed social dumping reference to Revenue Canada and the CITT. Ontario's green strategy, although dealing with a business sector designed to take economic advantage of environmental concerns, could still be associated with shortcomings in the NAAEC or the NAALC, but the lack of detail available on the actual content of this proposal makes it a more tenuous link to the side deals. From these comments it would appear that Ontario was fast becoming the leading advocate of provincial rights in Canada. As one scratched below the surface, however, it became clear that Ontario's motivations for challenging the NAFTA and the side deals had little to do with the intrusiveness of these agreements. The decision to pursue an anti-NAFTA position was solely related to political considerations associated with federal-provincial relations as opposed to any real concern over provincial rights. The battle over the NAFTA in Ontario actually started well before Lankin's speech in July of 1993. The earliest signs that the federal government was considering using Ontario to sell the NAFTA to the rest of the country came with the leak of a taped telephone conversation between several prominent federal Conservative advisors. In the conversation the officials referred to Ontario's rejection of free trade as "that old left-wing, crypto-communist, anti-free trade, NDP-Liberal con group."[31] In direct reference to Bob Rae the federal officials were of the opinion that his opposition to the debate could actually help Ottawa to promote the benefits of the NAFTA. In the conversation James Ramsay, the chief of staff for the Minister of International Trade, Michael Wilson, stated that "the more we've got Bob Rae... out there attacking us, it's forcing that coalition which has been sitting on their hands over the past two or three years, forcing them out behind us again"[32]

Following the leak of the tapes, however, Rae was remarkably restrained in his criticism. If he saw this as yet another example of marginalizing Ontario to gain the support of Quebec and the West he did not share his true feelings. Rae simply said that "political staffers will say the darndest things. I don't take it seriously at all." In fact, the harshest comment Rae had for Ottawa was that "if they try to turn this into some kind of partisan operation in which they are trying to undermine anyone's credibility... then that's very shortsighted and very unwise."[33] Why the limited criticism from a province that associated the federal Conservative free trade agenda with Ontario-bashing? Rae's comments had nothing to do with a newfound restraint in Queen's Park and everything to do with the fact that Ontario had important goals it wanted to achieve in the then on-going

Charlottetown constitutional talks. Rae was consumed with keeping the idea of a Social Charter at the forefront of the negotiations on the constitution and was not going to jeopardize these concerns with a harsh attack on Ottawa over comments on a leaked tape. The constitutional agenda was at the forefront of Rae's concerns, not free trade.

All of this changed, however, following the decision to drop the Social Charter from the Charlottetown Accord and the subsequent defeat of the agreement in a nation-wide referendum. To understand fully the evolution of the Ontario position on the NAFTA it is important to explain the relationship between Ontario's Ministry of Intergovernmental Affairs (MIA) and the province's Ministry of Industry, Trade and Technology (MITT). Although a number of departments were involved in the trade policy process MITT was basically in charge of "selling" NAFTA related issues in Ontario prior to the defeat of the Charlottetown Accord. Up until this point MITT had put together a number of cabinet submissions on the NAFTA but these proposals were rejected by the Cabinet Committee on Economic and Labour Policy (CCELP). According to one provincial official MITT made a concerted effort to include as many departments as possible in the drafting of these cabinet submissions. It was an environment "where information was shared and candid assessments of the NAFTA were made. Various aspects of the agreement were judged on the positive and negative impacts they might have and these conclusions were forwarded to the CCELP for consideration."[34]

In January of 1993, however, following the collapse of the Charlottetown Accord, MIA was given the responsibility of coordinating Ontario's NAFTA policy. This is in itself may not appear significant but a closer examination of the key players in MIA provides considerable insight into why Ontario's policy changed the way it did after the department became involved. Provincial officials referred to MIA as an "Ontario politburo" with Bob Rae as the Minister and Jeff Rose, a former college roommate of Rae, as the Deputy Minister. MIA usually exclusively focused on constitutional issues but after Charlottetown it essentially became a department with nothing left to do. Given Ontario's disappointment over the Social Charter, and its traditional belief that the province was a pawn for satisfying Quebec and the West, it was no surprise to provincial officials that MIA involvement marked a shift in policy for the province. The NAFTA was now at the forefront of the federal-provincial agenda and Rae was going to let Ottawa know just how upset he was with what he perceived to be unfair treatment of Ontario. Rose was of the opinion that MITT had not been critical enough of the NAFTA and that its "pro-business" orientation clouded the department's judgment of the deal. Rose quickly formed the "NAFTA group" which included some representatives from MITT but was essentially dominated by MIA officials. According to one observer close to the process MIA was

"extremely secretive about its plans for the NAFTA and certainly did not appear to trust any of the 'outsiders' from MITT. It was so bad that there was a certain paranoia about how they [MIA] went about doing things."[35] The department actively altered the way in which Ontario participated in the NAFTA process. Ontario had previously been vocal at federal briefings for the provinces but Rose gave the word that Ontario, without any explanation to the participants, would now adopt an "observer only" policy at these meetings. This made it extremely difficult for individuals sitting at the table supposedly representing Ontario. As one observer recalls, "I remember going to these meetings and none of the other provinces could figure out what was going on. At one point a federal representative lectured us on the province's 'bad attitude' but there was nothing I could say. Not surprisingly, it wasn't long before we [Ontario] lost all credibility at these meetings."[36]

Even when Ontario appeared to be making efforts to open up the process there were questionable motives at work. The Ontario Cabinet Committee which was set up to survey the views of Ontario business and non-governmental agencies provided little opportunity for any positive discussion of the NAFTA. According to one official, "the Chair of these hearings, Elmer Buchanan, was never really interested in facilitating any real dialogue on the issue. He always made it extremely clear in his opening statement that Ontario was opposed to the NAFTA and business quickly lost interest in the process. I mean why would anyone want to get involved if the provincial government had already made up its mind?"[37] Said the same representative "it was clear that the Ontario Cabinet Committee was simply a symbolic gesture designed to appease the Maude Barlows in the crowd. Bottom line, these hearings were just another tool for Ontario to try and derail the NAFTA."[38] The five-pronged challenge outlined by Lankin in her July 1993 speech was the focal point of MIA's plan to oppose the NAFTA. Affectionately labeled by MIA as the "In-Your-Face Campaign" the NAFTA attack was questioned by MITT officials who "thought it was foolish and warned that the other provinces involved would find it pathetic and amusing."[39] Regardless, MIA made it clear that they were going to fight a symbolic battle even though "provincial infighting seriously undermined the government's ability to challenge the NAFTA on the really important issues."[40]

A number of Ontario officials were especially critical of the In-Your-Face Campaign's legal challenge. MIA had hoped the legal challenge would convince Washington that the NAFTA was in serious trouble in Canada but in the words of one observer, "the Americans barely burped."[41] When first consulted on the possibility of a provincial challenge the Ontario Attorney General's Office (AGO) told MIA they did not have a legal leg to stand on. Undaunted, Rose continued to look for outside council to help the AGO with the planned litigation. As one official noted, "MIA was so unorganized that

Rae had to interview four sets of outside counsel before he could find anybody willing to handle it. MIA finally found a small firm in Vancouver but the input was extremely weak. The written opinion that I saw was a piece of crap and read like a bad undergrad essay."[42] After Lankin's announcement of the anti-NAFTA challenge MITT begged to be removed from the MIA committee and the AGO demonstrated its lack of support by only assigning two junior lawyers to assist outside counsel. "It was not hard to figure out what was going on," said one observer, but even if MIA "saw the rats leaving a sinking ship it was not prepared to give up its quest to ruin the NAFTA."[43] The response to the legal challenge in the rest of Canada was also limited. A federal official called the plan "laughable" while a provincial counterpart said it "was difficult to support something that had no link to reality."[44] Another provincial representative, however, did acknowledge that Ontario could ultimately have the full support of the provinces if they pursued the legal challenge to the end. According to this official, "there is too much at stake for the other provinces to sit on the sidelines and let Ontario finish this thing on their own. People tend to lose sight about what this case is all about. It really has nothing whatsoever to do with the NAFTA. It is really about provincial rights and the division of powers in Canada."[45] At the same time, the same official saw the challenge "as nothing more than an academic exercise designed to hurt future federal-provincial negotiations."[46]

The fact that the provinces would even consider participating in the Ontario challenge, and in doing so give it the legitimacy it so desperately lacked, is an indication of the overwhelming importance provincial governments place on the "power grab" of Canadian federalism. As soon as something has the potential to disrupt the existing federal-provincial relationship the interest level of sub-national actors increases significantly. The preceding discussion suggests that Alberta, Quebec, and British Columbia were all occupied to at least some degree with the changes brought about by these new trade regimes. It was Ontario, however, that demonstrated the most apparent lack of long-term focus in responding to the increasing pressures of globalization. Ontario "dropped the ball on the side deals" according to one official and even though the province had considerable contacts in the United States and had invested considerable time and effort on labour and environmental issues its position on the NAFTA "prevented most of this information from ever seeing the light of day."[47] In the words of one representative at the time, "Ontario has absolutely no long-term policy on trade and economic policy. The province has an alarming tendency to spin its wheels and re-invent memos from four years ago because so much of what Ontario does is related to the domestic political environment."[48] The same official attributed the lack of policy planning to the fact that the

majority of Ontario's representatives "go home at night and put their feet up. We are just doing our job and not taking things as seriously as the other provinces are."[49]

Conclusion

Intrusive interdependence raises several questions regarding competing theories of international political economy and Canadian federalism. In addition to expanding the agenda of federal-provincial relations, it focuses new attention on the role of the state and traditional distinctions between international and domestic levels of analysis. It challenges state sovereignty but has the potential to empower domestic actors previously marginalized in the policy process. For example, intrusive interdependence appears to reinforce regional cleavages in Canada, but also has possible long-term effects on non-territorial identities and their involvement in the formulation of Canadian foreign economic policy. As regimes continue to target areas of domestic jurisdiction there is little doubt that the interests of non-territorial cleavages will be included in future agreements. Developments at the domestic level suggest that it is highly likely that societal interests will mobilize if they feel their interests are jeopardized by these regimes. If and when they do so they will impose additional limits on the autonomy of both the federal and provincial governments. Coupled with restrictions from the international level these developments raise questions regarding future challenges to state autonomy.

Obviously, these developments will have a profound effect on the future of Canadian federalism and foreign economic policy making. In response, one would expect the major provinces to be concerned about the potential benefits and/or possible problems related to intrusive interdependence. To date, however, none of the provinces has implemented any long-term political or economic strategies designed to deal with these potential challenges. This does not mean that the provinces, especially the four discussed here, have failed to recognize the importance of these developments. On the contrary. Alberta and Quebec, for example, have become strong advocates of provincial rights and continue to stress the need for ongoing and close sub-national participation in this area of policy. The NAFTA-related experiences of British Columbia and Ontario, however, suggest that provincial governments are faced with a number of internal pressures that limit the capacity of the provinces to pursue effective and coherent policy initiatives in the area of international trade. As a result, economic strategies at the provincial level remain dominated by short term ad hoc policy considerations and suggest, at best, tentative attempts to address the increasing intrusiveness of international trade regimes such as the NAFTA.

Endnotes

1. Alan C. Cairns, *Disruptions: Constitutional Struggles, From the Charter to Meech Lake* (Toronto: McClelland and Stewart, 1991), p. 133.
2. Ibid., p. 151.
3. Richard Simeon and Ian Robinson, *State, Society, and the Development of Canadian Federalism - Volume 71 of the Royal Commission on the Economic Union and Development Prospects for Canada* Toronto: University of Toronto Press, 1990, p. 325. This is not to suggest that governments are no longer relevant to non-territorial interests in Canadian federalism. In fact, several groups during the Meech Lake and Charlottetown negotiations sought to strengthen elements of the constitution that would reinforce federal control in a number of issue areas. Specifically, some non-territorial interests, especially those concerned with environmental issues, actively sought a stronger Canadian state and increased national standards to counter the forces of intrusive interdependence. The key, however, is to remember that intrusive interdependence offers a framework that recognizes the potential future impact of these non-territorial actors on state autonomy. While governments are obviously still important there is also evidence to suggest, as noted by Cairns and Simeon and Robinson, that some of these actors have begun to question the relevance of these institutions as the legitimate articulators of their interests. For more information on the Meech Lake Accord, please see Richard Simeon, "Meech Lake and Shifting Conceptions of Canadian Federalism," in *Canadian Public Policy - The Meech Lake Accord*, 14 (Supplement - September 1988), pp. 7-24, Allan Tupper, "Review Article: Thinking and Writing About Meech Lake," *Alberta Law Review*, 29 (1991), pp. 310-335, Richard Johnston and Andre Blais, "Meech Lake and Mass Politics: The 'Distinct Society' Clause," in *Canadian Public Policy - The Meech Lake Accord*, 14 (Supplement - September 1988). For more information on the Charlottetown Accord, please see Robert M. Campbell and Leslie A. Pal, *The Real Worlds of Canadian Politics: Cases in Process and Policy*, 3rd ed. (Peterborough, Ontario: Broadview Press, 1994), Jennifer Smith, "The Unsolvable Constitutional Crisis," in Francois Rocher and Miriam Smith eds., *New Trends in Canadian Federalism* (Peterborough, Ontario: Broadview Press, 1995), pp. 67-90, J. Anthony Long and Katherine Beaty Chiste, "Aboriginal Policy and Politics: The Charlottetown Accord and Beyond," in Ronald L. Watts and Douglas M. Brown eds., *Canada: The State of the Federation 1993* (Kingston, Ontario: Institute of Intergovernmental Relations, 1993), pp. 153-174, and Rhadha Jhappan, "The Federal-Provincial Power-Grid and Aboriginal Self-Government," in Rocher and Smith eds., *New Trends in Canadian Federalism*, pp. 155-184.
4. Kathy L. Brock, "The End of Executive Federalism?" in Rocher and Smith eds., *New Trends in Canadian Federalism*, p. 103. While the impact of the ITACs and SAGITs were arguably negligible during the NAFTA negotiations it is still important to acknowledge the fact that input from non-governmental actors is much greater than it has been in the past. There is also the possibility that pressure from these interests will continue to grow in the future, possibly even reaching a level of impact similar to the ACTN process in the United States. For more information on policy communities and societal actors in the formulation of policy in Canada, please see Paul A. Pross, *Group Politics and Public Policy* (Toronto: Oxford University Press, 1986).
5. Long term limitations on provincial autonomy related to intrusive interdependence are also evident in current efforts to revise fiscal policy in Canada. The new Canada Health and Social Transfer (CHST), for example, is designed to reduce the amount of cash transfers to the provinces which in turn will place further limitations on increases for future federal payments. Some observers suggest that these changes are directly linked to increasing pressures from globalization. Specifically, downsizing state involvement in social support systems is consistent with liberal economic developments at the international level. In order for business to have the flexibility it needs to survive in this environment it

must not be constrained by commitments to burdensome social welfare programs. Although less federal money ultimately means more provincial autonomy in the short term (it will be difficult for Ottawa to enforce the Canada Health Act if they are not paying for the program) the provinces will eventually be challenged by domestic groups effected by domestic developments linked to international pressures. To pay for these programs the provinces will have to allow practices such as extra-billing by doctors, hospital user-fees, and increased fees for post-secondary education. As with the Meech Lake and Charlottetown Accords it is unlikely that societal interests concerned with these changes will tacitly accept new provisions which have a direct impact on their health, education, or standard of living. For more information on fiscal federalism and the new Canada Health and Social Transfer, please see Gerald Bernier and David Irwin, "Fiscal Federalism: The Politics of Intergovernmental Transfers," in Rocher and Smith eds., *New Trends in Canadian Federalism*, pp. 270-287, Garth Stevenson, *Unfulfilled Union: Canadian Federalism and National Unity*, 3rd. ed. (Toronto: Gage Publishing, 1989), Leon Muszynski, "Social Policy and Canadian Federalism: What are the Pressures for Change," in Rocher and Smith eds., *New Trends in Canadian Federalism*, pp. 288-318, Susan D. Phillips, "The Canada Health and Social Transfer: Fiscal Federalism in Search of a Vision," in Brown and Rose eds., *Canada: The State of the Federation 1995*, pp. 65-96, and Miriam Smith, "Retrenching the Sacred Trust: Medicare and Canadian Federalism," in Rocher and Miriam Smith eds., *New Trends in Canadian Federalism*, pp. 319-338.

6. Personal interview with confidential source, February 11, 1994.
7. Personal interview with confidential source, January 27, 1994.
8. Ibid.
9. Personal interview with confidential source, June 2, 1996.
10. G. Bruce Doern and Brian W. Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart Publishing, 1991), p. 142.
11. Ibid., p. 143.
12. Quebec, Department of International Affairs, *The Liberalization of Trade Between Canada, the United States and Mexico: The Issues From a Quebec Perspective* (Quebec: Ministere des Affaires Internationales, 1992), p. iv.
13. Personal interview with confidential source, February 23, 1994.
14. For a general overview of the softwood lumber dispute in British Columbia, please see Douglas M. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," in Douglas M. Brown and Murray G. Smith, eds., *Canadian Federalism: Meeting Global Economic Challenges?* (Kingston, Ontario: Queen's University Institute of Intergovernmental Relations, 1991), pp. 81-128, Kimberly Noble, "An Industry at War," *Globe and Mail* November 16, 1991, p. B-18, and, Canada, Parliament, Senate, Senate Standing Committee on Foreign Affairs, *Proceedings of the Standing Senate Committee on Foreign Affairs - Sixteenth Proceedings on: The Examination of a Free Trade Agreement Between Canada and the United States, Tuesday May 24, 1988* (Ottawa: Canada Communication Group - Publishing, Supply and Services Canada, 1988).
15. Personal interview with confidential source, February 23, 1994.
16. Ibid.
17. Ibid.
18. Ibid.
19. Daphne Bramham, "B.C. Bucks Trade Talk to Cheers of Workers: NDP Urges Canada Leave U.S., Mexico Deal Behind," *Vancouver Sun* June 6, 1992, p. H-1
20. Judy Lindsay, "NDP Tosses Trade Crumb to Sate Labour," *Vancouver Sun* June 6, 1992, p. H-1.
21. Ibid.
22. Personal interview with confidential source, February 23, 1994.
23. Ibid.
24. Ibid.

25. Doern and Tomlin suggest that Ontario saw the decision to implement an export tax in 1986 as a message to the Americans that Canada was capitulating on the softwood lumber issue. Peterson lobbied to gain support for the rejection of the tax but Ottawa and the provinces saw it as a means of keeping potential export duties in Canada instead of the United States. There was also the hope that the tax would help complete the Canada-United States free trade negotiations that were underway at that time. Either way, softwood lumber contributed to Ontario's growing isolation on trade policy issues.
26. Doern and Tomlin, *Faith and Fear: The Free Trade Story*, p. 150.
27. Ontario, Ministry of Intergovernmental Affairs, *Final Report - Cabinet Committee on the North American Free Trade Agreement* (Toronto: Queen's Printer for Ontario, 1993), p. 42.
28. Ibid., p. 44.
29. Ontario, Ministry of Intergovernmental Affairs, *Notes For Remarks by the Honourable Frances Lankin Minister of Economic Development and Trade at the O'Keefe Centre, Toronto, Wednesday, July 28, 1993: Economic Renewal, Trade and the Government's Response to the Report of the Cabinet Committee on the North American Free Trade Agreement* (Toronto: Queen's Printer for Ontario, 1993), pp. 8-9.
30. Ibid., p. 6.
31. "Special Report: The NAFTA Tapes," *Maclean's* September 21, 1992, p. 18.
32. Ibid., p. 21.
33. Richard Mackie, Virginia Galt and Drew Fagan, "Rae Tells Tories to Sell NAFTA: Premier Says 'Good Luck to Them' in Promoting Deal, Not Bashing Critics," *Globe and Mail* September 15, 1992, p. A-6.
34. Personal interview with confidential source, February 8, 1994.
35. Ibid.
36. Personal interview with confidential source, February 9, 1994.
37. Personal interview with confidential source, February 8, 1994.
38. Ibid.
39. Ibid.
40. Ibid.
41. Personal interview with confidential source, February 9, 1994.
42. Ibid.
43. Ibid.
44. Personal interview with confidential source, January 27, 1994.
45. Personal interview with confidential source, February 23, 1994.
46. Ibid.
47. Personal interview with confidential source, February 8, 1994.
48. Personal interview with confidential source, February 9, 1994.
49. Ibid.

CHAPTER 8

Conclusion

When this project was initiated its purpose was to examine the increasing influence of the provinces in the formulation of Canadian foreign economic policy. Not only has there been very little written in this area in recent years but it also appeared that the provinces were having an increasingly significant role to play in both the negotiation and implementation of international trade agreements. Although the previous chapters, provide a useful analysis of the evolving provincial presence in this area of policy it is also clear that this study has touched on a number of other issues not solely related to Canada's external economic relations. Thus, while this remains a study dealing with the process of foreign economic policy making in Canada, it also provides insight into the impact of globalization on Canadian federalism. In addition to providing a descriptive analysis of the policy process and demonstrating the influence of intrusive interdependence on federal-provincial relations, this study has also engaged the relevant theoretical material more rigorously than previous attempts to examine these issues. A review of the Canadian foreign policy and Canadian federalism literatures suggests the lack of appropriate theoretical models for adequately examining current developments. There is also a fundamental weakness in the existing material in terms of addressing issues of change, state autonomy, and international and domestic levels of analysis. Although international relations theory offers some promising alternatives, the majority of these contributions also fail to provide an adequate framework of analysis in terms of examining the relationship between international

regimes, federal-provincial relations and the formulation of Canadian foreign economic policy. The concept of intrusive interdependence has been introduced as an alternative approach by which to evaluate the ongoing evolution of globalization and the challenges these pressures present to both central and sub-national governments in the international system.

The previous chapters have focused on a number of issues that form the main lines of argument of this study. First, there is considerable evidence to suggest that international economic regimes and specifically the successive rounds of the General Agreement on Tariffs on Trade and the Canada-United States Free Trade Agreement have become more intrusive in the latter stages of the post-war period and that these regimes increasingly and more directly limit federal autonomy. These limitations are a direct result of the increasing scope and complexity of regime-based norms and regulations designed to liberalize international trade. Specifically, these agreements have evolved from the removal of transparent tariffs and quotas to non-tariff barriers, and more recently, to expansive rules-based arrangements dealing with such difficult issues as subsidies, services, and countervail measures. In addition, international economic regimes have also started targeting highly contentious sectoral issues, such as financial services and intellectual property rights, not traditionally included in these arrangements. Obviously, by increasing the number of issue areas in these agreements it becomes more difficult for the federal government to undertake economic policies that do not raise questions about discriminatory trade practices. As a result, Ottawa has been forced to decide between retaining the ability to make policies that might be considered protectionist or transferring more authority to regimes and limiting its own autonomy in order to manage the increasing pressures associated with global liberalization. Although Ottawa has been selective in its commitment to the norms and principles of these agreements in the past, the decision to include wide ranging investment provisions in the FTA and agricultural measures in the Uruguay Round of the GATT suggests that the federal government has been more willing to accept the loss of autonomy that accompanies these international linkages.

The second important premise of this analysis centers on the fact that many of the changes associated with the increasing intrusiveness of international globalization are not solely the result of the NAFTA. As chapters two, three, and four, suggest, many of the pressures currently associated with the intrusiveness of the NAFTA were already in place or motion prior to the negotiation of the agreement. In other words, international and domestic factors contributed both to an increase in provincial activity at the international level and a reduction in Ottawa's ability to unilaterally formulate foreign economic policy well before the implementation of the NAFTA. At the same time, however, (and this forms

the basis of the third point) it is also clear that the provisions of the NAFTA reinforce the increasing intrusiveness of existing international economic regimes. By closely examining the agreement it is clear that the NAFTA is more intrusive than any other previous arrangement. Specifically, the NAFTA calls for more binding provisions dealing with areas of both federal and provincial jurisdiction in matters relating to rules of origin, customs administration, national treatment, technical standards, land transportation, services, investment, intellectual property rights, and the licensing and certification of officials. These issues not only place greater limitations on Ottawa in terms of its commitments to these regimes but also create new pressures for the federal government in regards to being able to guarantee provincial compliance. As noted in chapter four the somewhat vague constitutional interpretation surrounding the treaty-making power, the trade and commerce power, and the Peace Order and Good Government provisions of the Constitution Act, 1867, make it extremely difficult for both levels of government to anticipate what the outcome of a future judicial challenge might be. As a result, both levels of government, despite Ontario's rhetoric during the NAFTA, would like to avoid the uncertainty of judicial interpretation. These reservations also limit the autonomy of both Ottawa and the provinces in the sense that neither level of government wants to pursue aggressive policy initiatives that might send the compliance issue to the courts.

The NAFTA committee system on international trade and the environment and labour side deals offer a good indication of the increasing pressures faced by the federal government in terms of provincial compliance. In addition, the committee system and the side deals also illustrate the fourth line of argument in this study, namely that regimes have placed a number of international economic issues on the agenda of Canadian federalism that are not traditional aspects of federal-provincial relations. In an attempt to deal with the overall intrusiveness of the agreement Ottawa has established a committee system designed to deal exclusively with issues of international trade. In the past these executive linkages met on an ad hoc basis and were relatively temporary as various GATT rounds were negotiated. Formalizing the committee system increases the possibility that these linkages will assume greater constitutional significance in the future. Given the lack of an effective regional brokerage mechanism to deal with matters of international trade the committee system will arguably gain more legitimacy as an institutional forum in which to deal with these issues. The NAFTA side deals on labour and the environment, while short of a comprehensive labour and environmental regime, also create further difficulties for Ottawa in guaranteeing provincial compliance. Given the fact that the North American Agreement on Environmental Cooperation (NAAEC) and the North American Agreement on Labour Cooperation (NAALC) focus almost exclusively on areas of provincial jurisdiction the

federal government was forced to rely on provincial expertise during the negotiation of these agreements and has subsequently entered into negotiations with the provinces for a binding compliance mechanism for the side deals. As with the committee system the side deals also have potential long-term constitutional significance in terms of setting precedents for dealing with international trade issues at the domestic level. Unlike the committee system, however, the Side Deal compliance mechanisms are not related to the already well established traditions of executive federalism.

Although the intrusiveness of international economic regimes such as the NAFTA clearly limit Ottawa's capacity to pursue independent policy initiatives at both the international and domestic levels it is important to acknowledge the fact that as globalization continues to evolve provincial autonomy will also be challenged by traditional and non-traditional actors. This fifth point rests on the assumption that as more areas of provincial jurisdiction are added to international trade agreements the provinces will suffer from many of the same limitations as those currently faced by the federal government. Furthermore, there is also evidence to suggest that non-territorial identities are becoming increasingly more relevant in federal-provincial relations. As suggested in chapter seven, Canadian federalism is no longer simply about governments. As the intrusiveness of regimes such as the NAFTA continue to include new areas of domestic jurisdiction it is inevitable that the interests of non-territorial cleavages, both economic and societal, will be included in these agreements. As was evident in the aftermath of Meech Lake and the bitter debate surrounding the Charlottetown Accord there is no reason to believe that these interests will not mobilize to protect their interests. As a result, it becomes less relevant to focus on question of centralization and decentralization in terms of Canadian federalism. It is instead more appropriate to examine international and domestic pressures that further limit both federal and provincial autonomy. In doing so, it becomes possible to better understand current developments that limit the capacity of federal and provincial governments to pursue independent policy initiatives at both levels of analysis.

Susan Strange, for example, has argued that states have shifted more control to international institutions and private and commercial organizations in order to deal with new systemic economic forces. In addition, Strange suggested that all states have lost varying degrees of authority, not to one another, but to the ever increasing influence of the market. Strange refers to these developments as both an "upwards" and "sideways" shift in power away from the state. Although she does acknowledge that there is also a "downward" shift in authority, from central to local and regional authorities she dismisses these developments as a "minor hypothesis."[1] There is nothing in this study that contradicts Strange's first two conclusions. Canada's experience with the NAFTA and the side deals suggests that Ottawa

is in fact shifting authority to economic regimes in order to deal with market forces. Strange's "downward" hypothesis would also appear to reflect the growing autonomy of the provinces in relation to the federal government. What Strange does not account for, however, is the possibility that increasing domestic pressure itself influenced by more intrusive regimes may also have an impact on state autonomy at either the federal or provincial level. Therefore, it is necessary to characterize these developments in terms of both international and domestic levels of analysis. Intrusive interdependence, at its extreme, solves this problem by calling attention to the societal effects of international regimes and identifying the growing influence of these domestic interests, initially in the form of sub-national governments, on the autonomy and authority of national governments. Intrusive interdependence thus places greater emphasis on what Strange refers to as a minor hypothesis, namely the potential impact of domestic societal interests on both federal and provincial autonomy.

Having said that, however, it is clear that central and/or sub-national governments are not going to disappear any time in the near future. There is considerable evidence to suggest that Ottawa still has considerable control over the policy process. Furthermore, Canada continues to emphasize issues of national interest in its approach to economic regimes such as the NAFTA and in its attempts to balance multilateral commitments with complimentary bilateral linkages. Many of the issues addressed by Brian Hocking and Douglas Brown are also relevant in regards to the current federal-provincial relationship on matters of foreign economic policy. Specifically, there is both confrontation and cooperation between both levels of government and Ottawa continues to seek mechanisms, such as the NAFTA committee system, to co-opt the provinces into the policy process. It would be a mistake, however, to characterize these efforts as simple extensions of traditional federal-provincial relations. Arguably, these developments represent something different with potential long-term significance for Canadian federalism and the formulation of foreign economic policy. In particular, it is important to understand that developments at the international level now have a direct impact on the agenda of Canadian federalism. To date, these linkages have further exacerbated regional cleavages. In the long term increasing pressures from both international and domestic non-territorial actors are likely and will have a direct impact on the autonomy of both levels of government.

These pressures on provincial autonomy contribute to the sixth main argument of this analysis. It would be wrong to suggest that provincial officials are not cognizant of the increasing intrusiveness of regimes such as the NAFTA, but it is also clear that domestic political and economic considerations have limited the formulation of long-term strategies designed to deal with these developments. Specifically, the effectiveness of the provinces

is limited by a lack of resources, challenges from domestic sectoral interests, and political and/or partisan considerations that exist at the provincial level. As a result, provincial initiatives in this area of policy tend to be primarily ad hoc and reactionary. Significantly, however, some provinces appear to be more able, or perhaps more willing, to try and address the intrusiveness of these regimes and ensure that their governments have a formalized role in the policy process. To date, Alberta and Quebec have expressed most concern over the long-term implications of agreements such as the NAFTA, especially in terms of provincial participation in the formulation of foreign economic policy.

While this study has focused on the effects of intrusive interdependence in the formulation of Canadian foreign economic policy, the importance of globalization is not limited to this issue area. There are a number of pressing matters that are being addressed with increasing frequency at the international level and which have profound implications for domestic politics and specifically federal-provincial relations. As international regimes expand into more areas of domestic jurisdiction comparable issues to those addressed here will likely emerge. Intrusive interdependence raises a number of questions that are directly related to these developments and their influence on the future of Canadian federalism. How will governments effectively regulate the Canadian economy and/or provide essential social services such as healthcare, unemployment insurance, and post-secondary education in response to these pressures? Will the intrusiveness of the these regimes finally force Canada to pursue an economic union that addresses its own internal trade barriers? How will institutional mechanisms involving both Ottawa and the provinces develop in other sectors as intrusive interdependence continues to evolve? What will the long-term effects of intrusive interdependence be on the relationship between the provinces and the federal government? All of these questions are related to issues of change, state autonomy and domestic and international levels of analysis. While this study touches on several of these concerns in a cursory manner it is clear that many important questions remain to be answered, even in terms of further analysis involving intrusive interdependence, the provinces, and international regimes such as the North American Free Trade Agreement.

Endnotes

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